No. 18-15

In the Supreme Court of the United States

JAMES L. KISOR,

Petitioner,

v.

ROBERT L. WILKIE,
Secretary of Veterans Affairs,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

JOINT APPENDIX

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Petition for Writ of Certiorari Filed June 29, 2018
Certiorari Granted December 10, 2018

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UNITED STATES COURT OF APPEALS
FOR VETERANS CLAIMS

JAMES L. KISOR,
Appellant,
v.
DAVID J. SHULKIN, M.D.,
Secretary of Veterans Affairs,
Appellee.

No. 14-2811

DATE	DESCRIPTION
08/26/2014	Notice of Appeal.
	* * *
08/27/2014	Declaration of Financial Harship.
	* * *
09/24/2014	Copy of BVA Decision.
	* * *
10/27/2014	Record Before the Agency notice.
	* * *
02/24/2015	Conference held.
	* * *
05/07/2015	Appellant's Brief.
	* * *
08/18/2015	Appellee's Brief.
	* * *

DATE	DESCRIPTION
10/02/2015	Appellant's reply brief.
10/15/2015	Record of Proceedings.
10/30/2015	Assigned case to Judge Lance.
01/27/2016	Memorandum Decision that the BVA decision is affirmed.
02/18/2016	Judgment.

* * *

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JAMES L. KISOR,
Claimant – Appellant,

v.

DAVID J. SHULKIN,
Secretary of Veterans Affairs,
Respondent – Appellee.

No. 16-1929

NO.	DATE	DESCRIPTION
1	04/27/2016	Appeal docketed.
		* * *
5	05/26/2016	Docketing Statement for the Appellant James L. Kisor.
6	05/27/2016	Docketing Statement for the Appellee McDonald.
		* * *
12	08/05/2016	BRIEF FILED for Appellant James L. Kisor.
		* * *
21	11/29/2016	BRIEF FILED for Appellee McDonald.
		* * *
27	01/26/2017	Official caption revised to reflect the change is Secretary of Veterans Affairs.

NO.	DATE	DESCRIPTION
28	01/25/2017	REPLY BRIEF FILED for Appellant James L. Kisor.
29	01/25/2017	APPENDIX FILED for James L. Kisor.
		* * *
33	02/16/2017	Official caption revised to reflect change in department secretary.
		* * *
38	06/06/2017	Submitted after ORAL ARGUMENT.
39	06/08/2017	Citation of Supplemental Authority pursuant to Fed. R. App. P. 28(j) for Appellant James L. Kisor.
40	09/07/2017	OPINION and JUDGMENT filed.
41	10/23/2017	Petition for panel rehearing, for en banc rehearing filed by Appellant James L. Kisor.
		* * *
43	11/02/2017	The court invites a response from Appellee Shulkin to the petition for panel rehearing filed by Appellant in 16-1929, petition for en banc rehearing filed by Appellant in 16-1929.
44	11/16/2017	RESPONSE of Appellee Shulkin to the petition for panel rehearing [41] filed by Appellant

NO.	DATE	DESCRIPTION
		James L. Kisor in 16-1929 , petition for en banc rehearing [41] filed by Appellant James L. Kisor in 16-1929.
		* * *
47	01/31/2018	PRECEDENTIAL ORDER filed denying [41] petition for panel rehearing filed by James L. Kisor; denying [41] petition for en banc rehearing filed by James L. Kisor.
48	02/07/2018	Mandate issued to the United States Court of Appeals for Veterans Claims.
		* * *

Veterans Administration

VETERAN'S APPLICATION FOR COMPENSATION OR PENSION

FORM APPROVED (OMB NO. 2900-0001)

JAN 11 1983

IMPORTANT: Read attached General and Specific Instructions before completing this form. Type, print or write plainly.

(DO NOT WRITE IN THIS SPACE) VA DATE STAMP

DEC 1982 PORTLAND, OREGON VARO

1A. FIRST NAME - MIDDLE NAME - LAST NAME OF VETERAN: JAMES L. KISOR

1B. TELEPHONE NO. (Incl. Area Code)

2. MAILING ADDRESS OF VETERAN (Number and street or rural route, city or P.O., State and ZIP code)

3A. VETERAN'S SOC. SECURITY NO.

3B. SPOUSE'S SOC. SECURITY NO.

4. DATE OF BIRTH: [illegible]

5. PLACE OF BIRTH: Portland, OR

6. SEX: M

7. RAILROAD RETIREMENT NO.

8. HAVE YOU EVER FILED A CLAIM FOR COMPENSATION FROM THE OFFICE OF WORKERS' COMPENSATION PROGRAMS? (Formerly the U.S. Bureau of Employees' Compensation)
☐ YES ☑ NO

8A. VA FILE NUMBER: C-

8B. HAVE YOU PREVIOUSLY FILED A CLAIM FOR ANY BENEFIT WITH THE VETERANS ADMINISTRATION?
☐ NONE
☐ HOSPITALIZATION OR MEDICAL CARE
☐ WAIVER OF RETIREMENT PREMIUMS
☐ DISABILITY COMPENSATION OR PENSION
☐ VOCATIONAL REHABILITATION (Chapter 31)
☒ VETERANS EDUCATIONAL ASSISTANCE (Chapter 33 or 34)
☐ WAR ORPHANS OR DEPENDENTS EDUCATIONAL ASSIST. (Chap. 35)
☐ DENTAL OR OUTPATIENT TREATMENT
☐ OTHER (Specify)

8C. VA OFFICE HAVING YOUR RECORDS (If known): RPC 376

SERVICE INFORMATION

NOTE: Enter complete information for each period of active duty including Reservist or National Guard Status. Attach Form DD 214 or other separation papers for all periods of active duty to expedite processing of your claim. If you do NOT have your DD 214 or other separation papers check (√) here ☐

10A. ENTERED ACTIVE SERVICE: DATE	PLACE	10B. SERVICE NO.	10C. SEPARATED FROM ACTIVE SERVICE: DATE	PLACE	10D. GRADE, RANK OR RATING, ORGANIZATION OR BRANCH OF SERVICE
11/6/62	Portland, OR		11/4/66	Camp Lejeune N.C.	PFC, USMC.

10E. HAVE YOU EVER BEEN A PRISONER OF WAR? ☐ YES ☒ NO (If "Yes," complete Items 10F and 10G)

10F. NAME OF COUNTRY

10G. DATES OF CONFINEMENT

11. IF YOU SERVED UNDER ANOTHER NAME, GIVE NAME AND PERIOD DURING WHICH YOU SERVED AND SERVICE NO.

12. IF RESERVIST OR NATIONAL GUARDSMAN, GIVE BRANCH OF SERVICE AND PERIOD OF ACTIVE OR INACTIVE TRAINING DUTY DURING WHICH DISABILITY OCCURRED

13A. IF YOU ARE NOW A MEMBER OF THE RESERVE FORCES OR NATIONAL GUARD GIVE THE BRANCH OF SERVICE

13B. RESERVE STATUS ☐ ACTIVE ☐ INACTIVE ☐ RESERVE OBLIGATION

13C. RESERVE OR NATIONAL GUARD UNIT ADDRESS

14A. ARE YOU NOW RECEIVING OR WILL YOU RECEIVE RETIREMENT OR RETAINER PAY FROM THE ARMED FORCES? ☐ YES ☒ NO (If "Yes," complete Items 14B, 14C, and 14D)

14B. BRANCH OF SERVICE

14C. MONTHLY AMOUNT: $

14D. RETIRED STATUS ☐ PERMANENT ☐ TEMPORARY DISABILITY RETIRED LIST

15A. HAVE YOU EVER APPLIED FOR OR RECEIVED DISABILITY SEVERANCE PAY FROM THE ARMED FORCES? ☐ YES ☒ NO (If "Yes," complete Item 15B)

15B. AMOUNT: $

16A. HAVE YOU RECEIVED LUMP SUM READJUSTMENT PAY FROM THE ARMED FORCES? ☐ YES ☒ NO (If "Yes," complete Item 16B)

16B. AMOUNT: $

MARITAL AND DEPENDENCY INFORMATION

17A. MARITAL STATUS (Check one): ☒ MARRIED ☐ WIDOWED ☐ DIVORCED ☐ NEVER MARRIED (If so, do not complete Items 17B through 21B)

17B. SPOUSE'S BIRTHDATE: 5/16/46

17C. NUMBER OF TIMES YOU HAVE BEEN MARRIED: 1

17D. NUMBER OF TIMES YOUR PRESENT SPOUSE HAS BEEN MARRIED: 1

17E. IS YOUR SPOUSE ALSO A VETERAN? ☐ YES ☒ NO (If "Yes," complete Item 17F, if known)

17F. SPOUSE'S VA FILE NO: C-

18A. DO YOU LIVE TOGETHER? ☒ YES ☐ NO (If "No," complete Items 18B through 18D)

18B. REASON FOR SEPARATION

18C. PRESENT ADDRESS OF SPOUSE

18D. AMOUNT YOU CONTRIBUTE TO YOUR SPOUSE'S SUPPORT-MONTHLY: $

18. CHECK (x) WHETHER YOUR CURRENT MARRIAGE WAS PERFORMED BY:
☒ CLERGYMAN OR AUTHORIZED PUBLIC OFFICIAL

A 6

VA FORM 21-526 AUG. 1982 (WHICH WILL NOT BE USED)

NOTE: Furnish the following information about each of your marriages. A certified copy of the public or church record of your CURRENT marriage is required.

20A. DATE AND PLACE OF MARRIAGE	20B. TO WHOM MARRIED	20C. TERMINATED (Death, Divorce)	20D. DATE AND PLACE TERMINATED
4/20/68 Vancouver, Wa	Sharon K. Watts	—	—

FURNISH THE FOLLOWING INFORMATION ABOUT EACH PREVIOUS MARRIAGE OF YOUR PRESENT SPOUSE

21A. DATE AND PLACE OF MARRIAGE	21B. TO WHOM MARRIED	21C. TERMINATED (Death, Divorce)	21D. DATE AND PLACE TERMINATED

IDENTIFICATION OF CHILDREN AND INFORMATION RELATIVE TO CUSTODY

NOTE: Furnish the following information for each of your unmarried children. A certified copy of the public or church record of birth or court record of adoption is required.

22A. NAME OF CHILD (First, middle initial, last)	22B. DATE OF BIRTH (Month, day, year)	*22C. SOCIAL SECURITY NUMBER OF CHILD	22D. CHECK EACH APPLICABLE CATEGORY: MARRIED PREVIOUSLY	STEPCHILD OR ADOPTED	ILLEGITIMATE	OVER 18 & ATTENDING SCHOOL	SERIOUSLY DISABLED
Walter J. Kisor	7/9/69						
Patricia L. Kisor	1/18/72						

22E. NAME AND ADDRESS(ES) OF PERSON(S) HAVING CUSTODY OF CHILD(REN), IF OTHER THAN VETERAN

23A. IS YOUR FATHER DEPENDENT UPON YOU FOR SUPPORT? ☐ YES ☒ NO (If "Yes," complete 23B)	23B. NAME AND ADDRESS OF DEPENDENT FATHER	23C. IS YOUR MOTHER DEPENDENT UPON YOU FOR SUPPORT? ☐ YES ☒ NO (If "Yes," complete 23D)

23D. NAME AND ADDRESS OF DEPENDENT MOTHER	23E. NAME AND ADDRESS OF NEAREST RELATIVE	23F. RELATIONSHIP OF NEAREST RELATIVE
	Mrs Elizabeth S. Kisor	mother

NATURE AND HISTORY OF DISABILITIES

24 NATURE OF SICKNESS, DISEASE OR INJURIES FOR WHICH THIS CLAIM IS MADE AND DATE EACH BEGAN

Post Traumatic Stress Disorder -

25A. ARE YOU NOW OR HAVE YOU BEEN HOSPITALIZED OR FURNISHED DOMICILIARY CARE WITHIN THE PAST 3 MONTHS? ☐ YES ☒ NO (If "Yes," complete 25B and 25C)	25B. DATES OF HOSPITALIZATION OR DOMICILIARY CARE	25C. NAME AND ADDRESS OF INSTITUTION

NOTE: Items 26, 27, and 28 need NOT be completed unless you are now claiming compensation for a disability incurred in service.

IF YOU RECEIVED ANY TREATMENT WHILE IN SERVICE, COMPLETE THE FOLLOWING INFORMATION

26A. NATURE OF SICKNESS, DISEASE OR INJURY	26B. DATES OF TREATMENT	26C. NAME, NUMBER OR LOCATION OF HOSPITAL, FIRST-AID STATION, DRESSING STATION OR INFIRMARY	26D. ORGANIZATION AT TIME SICKNESS, DISEASE OR INJURY WAS INCURRED

LIST CIVILIAN PHYSICIANS AND HOSPITALS WHERE YOU WERE TREATED FOR ANY SICKNESS, INJURY OR DISEASE SHOWN IN ITEM 26A, BEFORE, DURING OR SINCE YOUR SERVICE, AND ANY MILITARY HOSPITALS SINCE YOUR LAST DISCHARGE

27A. NAME	27B. PRESENT ADDRESS	27C. DISABILITY	27D. DATE
Portland Vet Center	2450 SE Belmont Portland 97214	PTSD	for last year

LIST PERSONS OTHER THAN PHYSICIANS WHO KNOW ANY FACTS ABOUT ANY SICKNESS, DISEASE OR INJURY SHOWN IN ITEM 26A, WHICH YOU HAD BEFORE, DURING OR SINCE YOUR SERVICE

28A. NAME	28B. PRESENT ADDRESS	28C. DISABILITY	28D. DATE
Sharon K. Kisor	see # 2	PTSD	—

IF YOU CLAIM TO BE TOTALLY DISABLED (Complete Items 29A through 33E)

29A. ARE YOU NOW EMPLOYED?	29B. IF YOU WERE SELF-EMPLOYED BEFORE BECOMING TOTALLY DISABLED, WHAT PART OF THE WORK DID YOU DO?
29C. DATE YOU LAST WORKED	29D. IF YOU ARE STILL SELF-EMPLOYED WHAT PART OF THE WORK DO YOU DO NOW?

30A. EDUCATION (Circle highest year completed)	30B. NATURE OF AND TIME SPENT IN OTHER EDUCATION AND TRAINING
1 2 3 4 5 6 7 8 (GRADE SCHOOL) 1 2 3 4 (HIGH SCHOOL) 1 2 3 4 (COLLEGE)	

LIST ALL YOUR EMPLOYMENT, INCLUDING SELF-EMPLOYMENT, FOR ONE YEAR BEFORE YOU BECAME TOTALLY DISABLED

31A. NAME AND ADDRESS OF EMPLOYER	31B. KIND OF WORK	31C. MONTHS WORKED	31D. TIME LOST FROM ILLNESS	31E. TOTAL EARNINGS
			—	

LIST ALL YOUR EMPLOYMENT, INCLUDING SELF-EMPLOYMENT, SINCE YOU BECAME TOTALLY DISABLED

32A. NAME AND ADDRESS OF EMPLOYER	32B. KIND OF WORK	32C. MONTHS WORKED	32D. TIME LOST FROM ILLNESS	32E. TOTAL EARNINGS
	S/C			

NET WORTH OF VETERAN AND DEPENDENTS (See attached instructions for Items 33A to 33E inclusive)

NOTE: Items 33A through 33E should be completed ONLY if you are applying for non-service-connected pension.

ITEM NO.	SOURCE	AMOUNTS				
		VETERAN	SPOUSE	NAME OF CHILDREN		
33A.	STOCKS, BONDS, BANK DEPOSITS	$	$	$	$	$
33B.	REAL ESTATE (Do not include residence)					
33C.	OTHER PROPERTY					
33D.	TOTAL DEBTS					
33E.	NET WORTH	$			$	$

INCOME RECEIVED AND EXPECTED FROM ALL SOURCES

NOTE: Items 34A through 35E should be completed ONLY if you are applying for non-service-connected pension

34A. HAVE YOU OR YOUR SPOUSE APPLIED FOR OR ARE YOU RECEIVING OR ENTITLED TO RECEIVE ANY BENEFITS FROM THE SOCIAL SECURITY ADMINISTRATION EITHER THAN SSI OR RAILROAD RETIREMENT BOARD? ☐ YES ☐ NO (If "Yes," complete Items 34B through 34F as applicable)	34B. MONTHLY AMOUNT (Include Medicare Deduction)	34C. BEGINNING DATE	34D. DATE YOU EXPECT BENEFITS TO BEGIN
	VETERAN $		
	SPOUSE $		
	34E. WILL YOU OR YOUR SPOUSE APPLY FOR EITHER BENEFIT DURING THE NEXT 12 MONTHS? ☐ YES ☐ NO	34F. DATE OF INTENTION TO APPLY	
		VETERAN	SPOUSE

35A. HAVE YOU OR YOUR SPOUSE APPLIED FOR OR ARE YOU RECEIVING OR ENTITLED TO RECEIVE ANNUITY OR REFUNDMENT BENEFITS OR ENDOWMENT INSURANCE FROM ANY OTHER SOURCE?

☐ YES ☐ NO (If "Yes," complete Items 35B through 35E, as applicable)

35B. MONTHLY AMOUNT	35C. BEGINNING DATE	35D. DATE OF INTENTION TO APPLY	35E. SOURCE OF BENEFIT
VETERAN $			
SPOUSE $			

SOURCE OF VETERAN AND DEPENDENTS' INCOME (Specify source for Items 36F, 37F and 38F "ALL OTHER INCOME" in Item 40, "REMARKS")		AMOUNT OF INCOME				
		VETERAN	SPOUSE	NAME OF CHILD/REN		
36. AMOUNT RECEIVED FROM JAN 1 TO THE DATE YOU SIGN THIS STATEMENT	A. EARNINGS	$	$	$	$	$
	B. SOCIAL SECURITY (GREEN CHECK)					
	C. OTHER ANNUITIES AND RETIREMENTS					
	D. DIVIDENDS AND INTEREST, ETC.					
	E. SUPPLEMENTAL SECURITY INCOME (GOLD CHECK)					
	F. ALL OTHER INCOME					
37. AMOUNT EXPECTED FROM DATE YOU SIGN THIS STATEMENT TO END OF THIS CALENDAR YEAR	A. EARNINGS					
	B. SOCIAL SECURITY (GREEN CHECK)					
	C. OTHER ANNUITIES AND RETIREMENTS					
	D. DIVIDENDS AND INTEREST, ETC.					
	E. SUPPLEMENTAL SECURITY INCOME (GOLD CHECK)					
	F. ALL OTHER INCOME					
38. AMOUNT EXPECTED FOR THE NEXT CALENDAR YEAR	A. EARNINGS					
	B. SOCIAL SECURITY (GREEN CHECK)					
	C. OTHER ANNUITIES AND RETIREMENTS					
	D. DIVIDENDS AND INTEREST, ETC.					
	E. SUPPLEMENTAL SECURITY INCOME (GOLD CHECK)					
	F. ALL OTHER INCOME					

39A. GROSS AMOUNT OF FINAL PAY RECEIVED	39B. DATE FINAL PAY WAS RECEIVED
$	

40. REMARKS (Identify your statements by their applicable item number. If additional space is required, attach separate sheet and identify your statements by their item numbers)

#28. 21-4142 attached - transcript of hearing / Appeal of termination VA of Columbia City, OR - Please obtain as remarks on record pertinent to claim

NOTE: Filing of this application constitutes a waiver of military retired pay in the amount of any VA compensation to which you may be entitled. See instructions for Items 14A and 14 D inclusive, Retired Pay.

CERTIFICATION AND AUTHORIZATION FOR RELEASE OF INFORMATION - I certify that the foregoing statements are true and complete to the best of my knowledge and belief. I CONSENT that any physician, surgeon, dentist or hospital that has treated or examined me for any purpose, or that I have consulted professionally, may furnish to the VETERANS ADMINISTRATION any information about myself, and I waive any privilege which renders such information confidential.

41. DATE SIGNED	42. SIGNATURE OF CLAIMANT
12/3/82	SIGN HERE X [signature]

ADDRESS TO SIGNATURES OF CLAIMANT IF MADE BY "X" MARK

NOTE: Signature made by mark must be witnessed by two persons to whom the person making the statement is personally known, and the signatures and addresses of such witnesses must be shown.

43A. SIGNATURE OF WITNESS	44A. SIGNATURE OF WITNESS
43B. ADDRESS OF WITNESS	44B. ADDRESS OF WITNESS

PENALTY - The law provides severe penalties which include fine or imprisonment, or both, for the willful submission of any statement or evidence of a material fact, knowing it to be false, or the fraudulent acceptance of any payment to which you are not entitled

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PSYCHIATRIC EXAMINATION AND POST TRAUMATIC STRESS REVIEW

KISER, James T.
SS#
C#

March 2, 1983

Mr. Kisor is a 39-year old Marine Corps Vietnam veteran who is being evaluated to determine the possible presence of post traumatic stress disorder. Prior to interviewing the veteran I reviewed a social summary prepared by Arné Henifin dated 2-11-83. In addition I also reviewed various letters and memoranda from employers involving his employment termination and charges of insubordination and violent behavior resulting in these charges. These materials are now incorporated in the veteran's file including the correspondence from National Appliance Company and a termination letter from Columbia County Road Department written to the veteran as well as a statement of various incidences which describe episodes of the veteran losing his temper or behaving in such a manner that other employees would refuse to work with him. The social summary prepared by Mr. Henifin is probably one of his longer documents. It covers in good detail his various work experiences and difficulties he had getting along with supervisors and coworkers. I also note with interest the descriptions of the veteran's wife concerning his tendency to be a perfectionist as well as his manner of being very hard on himself as well as others if certain standards are not met. He is described as being very critical of other people's work having the tendency to alienate people especially get them angry at him. I also note Mr. Henifin's statement that the veteran reported no battle problems or traumatic experiences.

The interview with the veteran was a very lengthy one, partly because of his difficulty in summarizing some of the detailed narrative accounts that he provided. I had to allow the veteran to get his story out in this fashion, because he seemed to have difficulty in providing more summarized interpretive statements. This difficulty was noted particularly when it came to describing his difficulty in getting along with superiors or anybody who has a position of influence or control over him. It was my overall impression that the veteran has some severe conflicts and psychoneurotic problems in the areas having to do with control and being under control. For this reason it is very difficult for him to talk about those very issues which disturb him the most. Nevertheless through a lengthy discourse certain themes became vividly clear: That this man responds to situations where he is under somebody else's control with a sense of rage and refusal to submit to this control. The variety of anecdotes provided, veteran related his feelings of contempt to the many people who have attempted to boss him around. He often experiences these people as stupid and incompetent, and seems to justify much of his insubordination because of this. However veteran also seems to understand that there is a process occurring within him that gets out of his control, and this frightens him. Towards the end of a very lengthy interview he described an incident in which he went to a County Commissioner's house and began using foul language in the middle of the night. This incident

had been described earlier in the interview, in the context of the alleged corruption of the Commissioner in the veteran's justification for his behavior. However the veteran later described his feeling of not being able to control his anger and his frustration having lost good employment because of this. Before terminating the interview he stated that for several weeks he has been experiencing a growing preoccupation with fantasies of getting into a fight with someone. These fantasies attract him and he is feeling the urge to hurt somebody, although he has no particular person in mind.

The veteran states that he joined the Marines at age 19 in 1962. His MOS was as a Lineman and he was trained at field wire school. He then participated in combat readiness exercises in a mortar team laying wire lines for the guns doing this between 1963 and 1964. He then began a tour in a floating batallion readiness in Southeast Asian seas between the Philippines, Korea, and Okinowa, this tour lasting one year. As far as I am told the veteran did not get involved in any disciplinary problems or experience difficulty with insubordination during that period of time. The question about his problems with authority and the military was brought up earlier in the interview when the veteran was questioned about his readiness to tolerate the arbitrary commands of a superior officer. The veteran states that during peace time he was able to understand and work within this kind of command reginen. However he then contrasted this to a situation of warfare where as individual life was at stake. He then began a long dialogue discussing how he would not submit to the authority of someone stupider or less knowledgeable than himself if this person in command was going to get the veteran killed. During this discourse he then made various allusions to the alleged stupidity of various commanding officers in Vietnam. His attitude of contempt for the leadership became very clear during this discourse. The veteran seemed to be implying that the exposure to potential combat and the implied danger did affect a change upon his adaptation, especially in relationship to his difficulty in relating to authority figures.

Veteran states that he was sent to Vietnam in July 1965. He was first based in the general area of Qua Non in the Central Highlands south of Da Nang. It was his job to install phone lines and operate radio relay installations as well as serving as perimeter guard. This period of service lasted from July through September. The veteran was then assigned to a line company as communications expert. He almost always was carrying communications wire with him for the installation of field telephone networks (this appears to be sometimes potentially useful in case the enemy attempted to jam radio communications). When the veteran was asked to describe combat situations he seemed very defensive and wanted to make certain that I understood that he was always in situations of combat danger. Nevertheless it would appear that he was involved in one major ambush which resulted in 13 deaths in a large company. The veteran does not remember how long this ambush lasted. He described the ambush in the context of the stupidity of his commanding officer's orders and judgement. This had to do with the

Lieutenant failing to recognize the dangerous ambush potential of the approaching territory. Reportedly the veteran warned the Lieutenant about this, his warnings went unheeded, and within a few minutes the ambush indeed did occur. Apparently his company was under attack from small-medium size guns from a hedgerow in the distance. This occurred during Operation Harvest Moon when the veteran was on a search operation. Apparently the Marines were pursuing the Viet Cong enemy in an operation designed to drive them towards another group of Marines approaching from the opposite direction. At one point the enemy turned around and began firing rounds, holding off the approach of the Marines. The veteran mentioned the frustration of the men who were "hot and furious" to get those VC's.

As far as I can tell the only other situations of enemy contact involved several contacts with snipers and occasional mortar rounds fired into his base of operation. It took me a long time to distill out this particular information from the veteran's account. Whenever I would ask direct questions concerning the actual amount of combat activity, this subject would get lost as he would again launch into another detailed anecdotal monologue. These monologues generally depicted various situations where the leadership made a mockery of themselves because of their stupidity. There were several anecdotes told where the veteran refused to follow the order of the commanding officer and got away with it. On one such occurrence he was ordered by a Lieutenant to stop drinking so much water (because it was being rationed because of limited supply). The veteran picked up his rifle and threatened to shoot this man if he dared mess around with him and apparently got away with it. As the veteran described this and other similar stories a pleasurable smile appeared upon his face.

ADDENDUM TO PSYCHIATRIC & POST TRAUMATIC STRESS DISORDER REVIEW

KISOR, James L. March 16, 1983
SS#

A portion of the original dictation on this PTSD examination has been lost. After reading the available portion of the written report I was able to recall enough information to render an opinion, as well as to recall what my diagnostic impression was at the time of the dictation. Specific review of symptoms related to the PTSD criteria was not available either in the report or my memory. However I do recall my distinct impression that this man suffers from a personality disorder as opposed to PTSD.

It is my general recollection that this veteran is a very angry person who is particularly concerned with issues of control between himself and other individuals. He characteristically expressed contempt for anybody in a position of authority and control over him, and his anecdotes betrayed his feelings of contempt and were often colored by this issues. An example is the descriptions of his Vietnam combat situations were couched in the framework of his basic premise: that most people who have attempted to boss him around had been inferior to him either intellectually or morally. The situation with the allegedly corrupt commissioner is a case in point. Although the veteran seemed to recognize the extensiveness of his rage and his difficulty with controlling his behavior and impulses, he also was very intent on describing the corruptness and ineptness of the people he was attacking. I recall that the veteran had involved himself in union activities where he was always fighting the establishment and informing workers of their rights so that they could not be abused. When the veteran described the various situations a sense of his own superiority was infused into the various anecdotes. The veteran's ability to threaten his commanding officer with a gun and get away with it was a source of pride for him and a source of pleasure when he had the opportunity to tell the story to me.

IMPRESSION: It was my specific impression that this man suffers from an emotional disturbance and personality disorder related to issues of control and the anger engendered when he feels that other people have power over him. I recall that I was not impressed with the finding of post traumatic stress disorder. However I cannot recall the specifics of any symptom review. In addition to the diagnosis of intermittent explosive disorder I am assigning a personality disorder diagnosis, a typical mixed type. There are some features of the obsessive compulsive personality as relates to issues of control in the rage experienced associated with this as well as some traits of perfectionism. However he is not typically an obsessive-compulsive personality.

DIAGNOSES: AXIS I. INTERMITTENT EXPLOSIVE DISORDER, DSM 312.34.
AXIS II. ATYPICAL PERSONALITY DISORDER, DSM 301.89.

\ppx21

DIAGNOSES: Continued

AXIS IV & V. SEVERITY OF STRESSOR, NOT APPLICABLE.
LEVEL OF ADAPTIVE FUNCTIONING IN THE PAST YEAR FAIR.

The Rating Board can decide whether there is sufficient information available in the available dictation to justify a clinical finding. I can simply state that I remember my initial impression that this man does not suffer from PTSD.

The veteran is competent to handle benefit funds.

3-23-83

ROBIN HENDERSON, M.D. Date

d: 3-16-83 t: 3-17-83/ak

\ppx22

NOTE: SHADED AREA TO BE COMPLETED BY INPUT ACTIVITY

Veterans Administration

1. COPY TO: [ ] VMS [ ] SMRD [ ] DEA FOLDER [ ] M & E FOLDER [X] OTHER (Specify) DAV

RATING DECISION

2. FILE NUMBER: C-

4. DATE OF CLAIM	5. DATE OF LAST EXAMINATION	6. DATE OF DEATH	7. INITIALS AND SURNAME OF VETERAN
12-3-82	3-2-82 83		J. L. KISOR

8. SEX	9. BRANCH	10. ACTIVE DUTY (Mo., day, yr.) EOD	RAD	11. ADDTL. SVC	12. DATE OF BIRTH	13. COMBAT
[X] MALE [ ] FEMALE	C	11-6-62	11-4-66		3-30-43	1

13. COMBAT: 1 NONE; 2 COMP; 3 NON COMP; 4 BOTH

14. EMPLOYABILITY (For compensation only)	15. COMPETENCY	16. NO. OF S/C DISAB. (0 through 9) (9 is above 9 or more)	17. FUTURE DATE CONTROLS: PHYSICAL EXAM. MO. YR. REASON	OTHER CONTROL: 1 ESTAB. 2. CANCEL ACT. MO. YR. REA.	18. DATE OF THIS RATING
1. EMPLOYABLE OR NOT AN ISSUE 2. UNEMPLOYABLE: 1	1. COMPETENT OR NOT AN ISSUE 2. INCOMPETENT: 1	0	NO EXAM 01		MAY - 9 1983

19. NARRATIVE

J. Original claim, VA Form 526.

I. SC for post traumatic stress neurosis.

F. Vet served in Viet Nam and earned the Vietnamese Service Medal, Good Conduct Medal, and National Defense Service Medal. VA psychiatric examiner has diagnosed intermittent explosive disorder and atypical personality disorder. SMRs are negative for diagnosis or manifestations of a psychiatric illness. The report dated 2-14-83 from the Portland Vet Center has been considered.

8. NSC (PTE, VE)

9411 POST TRAUMATIC STRESS NEUROSIS, CLAIMED BY VET; NOT SHOWN BY EVIDENCE OF RECORD

9499-9400 INTERMITTENT EXPLOSIVE DISORDER (CDA)

9499-9400 ATYPICAL PERSONALITY DISORDER (CDA)

INPUT VIA TARGET
Date 5/11/83
By MAB

20. SPECIAL PROVISION CODE: 1 – PAR. 29; 2 – PAR. 30; 3 – VAR 1321; 4 – VAR 1322; 5 – ANNUAL RATING; 6 – PAR. 29; 8 – OTHER OR CO...

21. SPECIAL MONTHLY COMPENSATION: A. SMC PAR CODE; B. LOSS OF USE; C. AMAT. LOSS; D. OTHER LOSS; E. HOSP SMC

22. NO. OVER SIX

23. CLAIMANT REPRESENTED BY: [ ] AL [ ] VFW [ ] ARC [ ] OTHER (Specify)

24. RATING BOARD NO. III

25. R.O. NO. 348/vh

26. RATING SPECIALIST (Medical): Physician

27. RATING SPECIALIST (Non-Medical)

28. RATING [illegible] (Non-Medical): L. PACELLA* (306)

VA FORM OCT 1980 21-6796 SUPERSEDES PREVIOUS EDITION

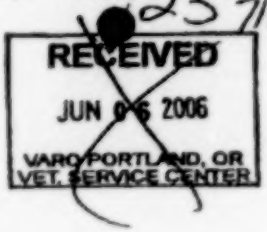
15 3

U.S. Government Printing Office: 1981—341-425/8510

MAY 11 1983

1:34 5-2-83

23711970



June 5, 2006

James L. Kisor

United States Department of Veterans Affairs
Regional Office
1220 S.W. Third Avenue
Portland, OR 97204

HAND DELIVERED

SUBJECT: CLAIM FOR VA BENEFITS

I hereby make application for Post Traumatic Stress Disorder (PTSD) benefits, caused by my service in a United States Marine Corps infantry battalion (2nd Battalion, 7th Marine Regiment) in Vietnam, during 1965 and 1966.

In that regard, please note the attached Marine Corps documents: DD-214 - - - and - - - Marine Corps record entitled: "NAVMC 118(9) –PD" which records my direct participation on **OPERATION HARVEST MOON** with the battalion during the period Dec 9, 1965 through December 18, 1965, which was one of the most bloody and lethal operations in which my battalion - - - in terms of Marine brothers killed and injured. My participation/involvement on Harvest Moon, authorizes me to wear a Marine Corps **"COMBAT ACTION RIBBON"** (CAR). I cannot understand why the VA has continuously IGNORED this document, which records the nature of my combat service/stress.

The record will reveal during Operation Harvest Moon, that we were ambushed by VC/NVA at Ky Phu, and that I killed enemy with my M-14 rifle. That incident, in particular, was the reason why commencing December 28, 1981, that I participated weekly FOR MORE THAN ONE YEAR in the "readjustment program" at the VET CENTER on Belmont Street, here in Portland. In that regard, please note the attached copy of a letter dated February 14, 1983, from the VET CENTER/David E. Collier, MS - - Vet Center Counselor - - - to VA Adjudication Officer Pfeiffer at the Portland VA Regional Office, wherein Mr Collier emphasized the following:

> "He complained that he was encountering difficulties in controlling his anger and dealing with people in authority positions. These problems were apparently exacerbated by some of his experiences in Vietnam. . . Subsequent involvement in group and individual counseling identified additional concerns that Mr. Kisor had towards depression, suicidal thoughts

LEST 024
6/23/06 EGR

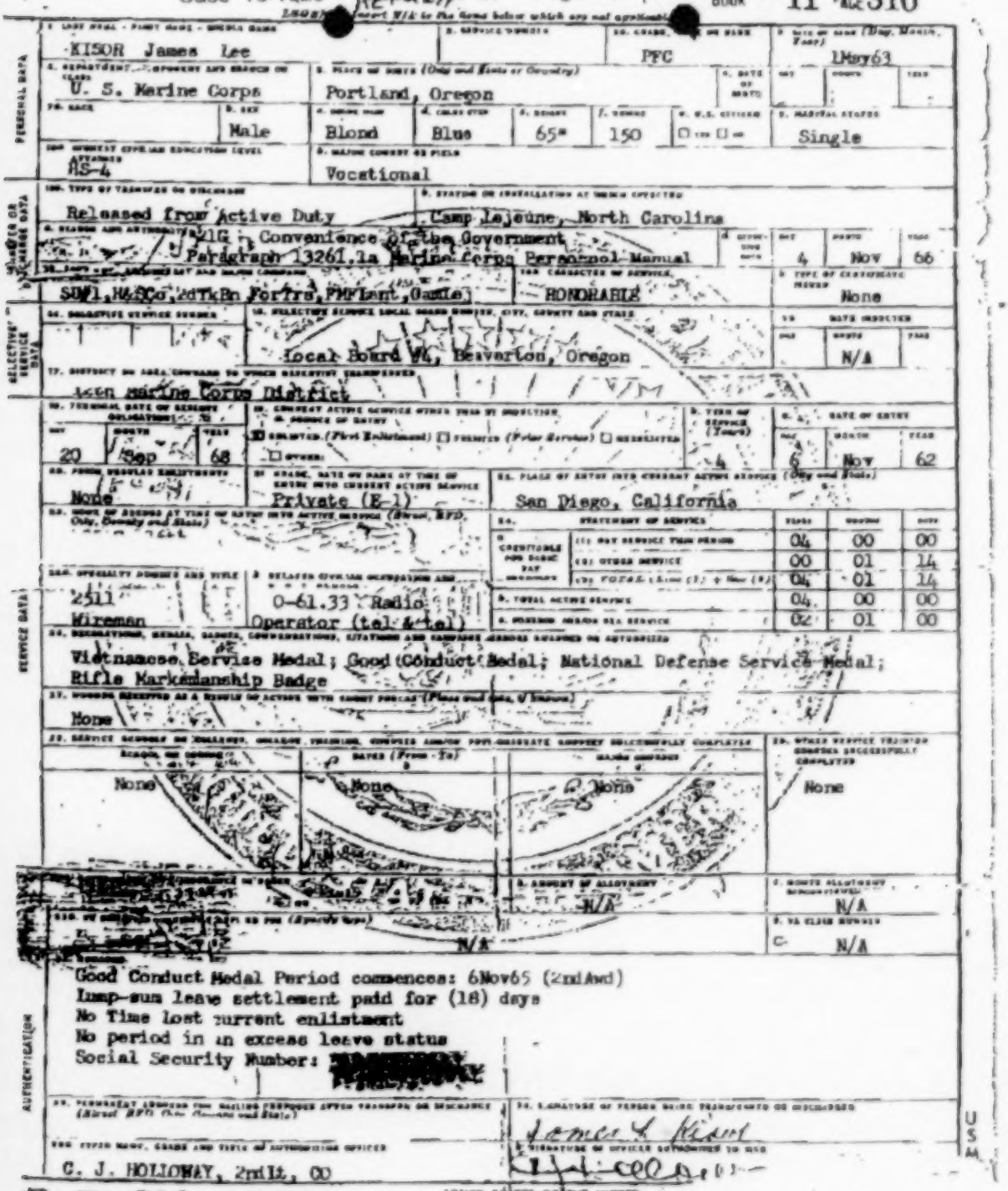
and social withdrawal. This symptomatic pattern has been associated with the diagnosis of Post-Traumatic Stress Disorder (DSM III 309.81).

Again, I cannot understand why the VA has continuously IGNORED Mr. Collier's document, which records the nature of my combat service/stress.

VA records will verify that I earlier filed a claim for PTSD benefits, which was improperly denied for reasons which I don't understand, in light of the facts - - - some noted above.

Thank you.

Sincerely, James L Fisher



1. LAST NAME - FIRST NAME - MIDDLE NAME: KISOR James Lee
2. SERVICE NUMBER:
3. GRADE, RATE OR RANK: PFC
4. DATE OF GRADE (Day, Month, Year): 1May63
5. DEPARTMENT, COMPONENT AND BRANCH OF SERVICE: U. S. Marine Corps
6. PLACE OF BIRTH (City and State or Country): Portland, Oregon
7. DATE OF BIRTH: 4 Nov 66
8. RACE:
9. SEX: Male
10. CHEST: Blond
11. COLOR EYES: Blue
12. HEIGHT: 65"
13. WEIGHT: 150
14. U.S. CITIZEN: ☐ yes ☐ no
15. MARITAL STATUS: Single
16. HIGHEST CIVILIAN EDUCATION LEVEL ATTAINED: AS-4
17. MAJOR COURSE OF FIELD: Vocational
18. TYPE OF TRANSFER OR DISCHARGE: Released from Active Duty
19. STATION OR INSTALLATION AT WHICH EFFECTED: Camp Lejeune, North Carolina
20. REASON AND AUTHORITY: MCO P1610.7 Convenience of the Government Paragraph 13261,1a Marine Corps Personnel Manual
21. DATE: 4 Nov 66
22. NEAREST RELATIVE (Name and Address): SOW1,H&SCo,2dTkBn FortTra,FMFLant,Ocalla
23. CHARACTER OF SERVICE: HONORABLE
24. TYPE OF CERTIFICATE ISSUED: None
25. SELECTIVE SERVICE NUMBER:
26. SELECTIVE SERVICE LOCAL BOARD NUMBER, CITY, COUNTY AND STATE: Local Board #4, Beaverton, Oregon
27. DATE INDUCTED: N/A
28. DISTRICT OR AREA COMMAND TO WHICH SELECTIVE SERVICE TRANSFERRED: Aggn Marine Corps District
29. TERMINAL DATE OF RESERVE OBLIGATION: 20 Sep 68
30. CONTRACT ACTIVE SERVICE WITHIN YEAR OF ENLISTMENT: ☒ ENLISTED (First Enlistment) ☐ TRANSFER (Prior Service) ☐ REENLISTED ☐ OTHER
31. YEARS OF SERVICE (Years): 4
32. DATE OF ENTRY: 6 Nov 62
33. PERSON PROVIDED ENLISTMENTS: None
34. GRADE, RATE OR RANK AT TIME OF ENTRY INTO CURRENT ACTIVE SERVICE: Private (E-1)
35. PLACE OF ENTRY INTO CURRENT ACTIVE SERVICE (City and State): San Diego, California
36. HOME OF RECORD AT TIME OF ENTRY INTO ACTIVE SERVICE (Street, RFD, City, County and State):
37. STATEMENT OF SERVICE:

		Years	Months	Days
a. CREDITABLE FOR BASIC PAY PURPOSES	(1) NAVY SERVICE THIS PERIOD	04	00	00
	(2) OTHER SERVICE	00	01	14
	(3) TOTAL (Lines (1) + (2))	04	01	14
b. TOTAL ACTIVE SERVICE		04	00	00
c. FOREIGN AND/OR SEA SERVICE		02	01	00

38. MOS: 2511 Wireman
39. RELATED CIVILIAN OCCUPATION AND DESCRIPTION: 0-61.33 Radio Operator (tel &tel)
40. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED: Vietnamese Service Medal; Good Conduct Medal; National Defense Service Medal; Rifle Marksmanship Badge
41. WOUNDS RECEIVED AS A RESULT OF ACTION WITH ENEMY FORCES (Place and Date, if known): None
42. SERVICE SCHOOLS OR COLLEGES, CORRESPONDENCE COURSES AND/OR POST-GRADUATE COURSES SUCCESSFULLY COMPLETED:

(a) Name of School	(b) Dates (From - To)	(c) Major Courses	(d) Other Training Courses Successfully Completed
None	None	None	None

43. AMOUNT OF ALLOTMENT: N/A
44. MONTH ALLOTMENT BECAME EFFECTIVE: N/A
45. VA CLAIM NUMBER: C- N/A
46. REMARKS: N/A

Good Conduct Medal Period commences: 6Nov65 (2nd Awd)
Imp-sum leave settlement paid for (18) days
No Time lost current enlistment
No period in an excess leave status
Social Security Number: [redacted]

47. PERMANENT ADDRESS FOR MAILING PURPOSES AFTER TRANSFER OR DISCHARGE (Street, RFD, City, County and State):
48. SIGNATURE OF PERSON BEING TRANSFERRED OR DISCHARGED: James L Kisor
49. TYPED NAME, GRADE AND TITLE OF AUTHORIZING OFFICER: C. J. HOLLOWAY, 2ndLt, CO
50. SIGNATURE OF OFFICER AUTHORIZED TO SIGN: C J Holloway

DD FORM NOV 68 214 REPLACES EDITION OF 1 JAN 1950 WHICH IS OBSOLETE

Appx2?

COMBAT HISTORY—EXPEDITIONS—AWARDS RECORD

COMBAT HISTORY—EXPEDITIONS

DATE OF ENTRY	DETAILS	DATES FROM (inc)—	DATES TO—	SIGNATURE
AUG 2 2 1965	PARTICIPATED IN COUNTER-INSUR-JUL OENCT OPERATIONS REPUBLIC OF SOUTH VIET NAM	7 1965	13 May 66	[signature]
DEC 1 8 1965	PARTICIPATED IN OPERATION "HARVEST MOON", RVN DEC 9	1965	DEC 1 8 1965	[signature] BY DIR

AWARDS

DESCRIPTION	STARS, DEVICES	DATE APPROVED	APPROVED BY	DATE MEDAL ISSUED	SIGNATURE
Vietnamese Serv Rl			President U.S.		[signature]
X GCMDL		29Nov65	CO, H&SCo 2nd Bn 7th Mar		[signature]
NATLFSM		13May66	SecNav		[signature]

NAME (Last) KISOR (First) James (Middle) Lee SERVICE NO.

NAVMC 1329-PD (REV. 11-53) SUPERSEDES PREVIOUS EDITION WHICH

19 28

U. S. GOVERNMENT PRINTING OFFICE: 1961 O-611931

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES — ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID

CORRECTION TO DD FORM 214, CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY

1. NAME (Last, First, Middle Initial)	2. COMPONENT AND BRANCH	3. SOCIAL SECURITY NUMBER (Also, Service Number if applicable)
KISOR James Lee	U. S. Marine Corps	
4. MAILING ADDRESS (Include ZIP Code)		

5. ORIGINAL DD FORM 214 IS CORRECTED AS INDICATED BELOW:

ITEM NO.	CORRECTED TO READ
26.	SEPARATION DATE ON DD FORM 214 BEING CORRECTED - 4 Nov 68 64389-2007-5892-KP Change to DD-215 issued NOV 13 2006 Del: Vietnamese Service Medal Presidential Unit Citation Add: Combat Action Ribbon Presidential Unit Citation (w/1 Bronze star) Navy Unit Commendation Vietnam Service Medal (w/2 Bronze stars)

8. DATE (YYYYMMDD)	7. OFFICIAL AUTHORIZED TO SIGN			
	a. TYPED NAME (Last, First, Middle Initial)	b. GRADE	c. TITLE	d. SIGNATURE
20071005	DOMBROSKI, R. M.	CWO 2	MELNO; NPRC	

DD FORM 215, FEB 2000 — PREVIOUS EDITION IS OBSOLETE — SERVICE - 2

2011 JAN 25 PM 12:04

Department of Veterans Affairs

Memorandum

Date: 06/22/2007

From: Manager, Veterans Service Center

RE: *Kisor, James L. C:*

Subj: Formal Finding of Information Required to Document the Claimed Stressor

To: File

a. Veteran's primary stressor was his participation in Operation Harvest Moon in Vietnam. The veteran gives us the date of 12/18/1965.
b. We have not yet received the veteran's 201 file However, his service medical records verify his service in Vietnam with 2nd Battalion 7th Marines from as early as June 1965 to as late as May 1966. The attached extract from the daily log of the 2nd Battalion 7th Marines details the events the veteran describes. The battalion was attacked at Ky Phu Hamlet by an estimated VC battalion They were attacked with small arms, crew served weapons, hand grenades, and mortars Although US casualties are not listed the extract shows over 100 VC killed in the action.
c. Stressor verified.

Signature/Position: Chet Taylor, Regional Office JSRCC Coordinator
SVSR/213

\ppx30

DECLASSIFIED

S-2, 2nd Battalion, 7th Marines

Chu Lai, South Vietnam

TIME IN	TIME OUT	SERIAL NO	DATE TIME GROUP	INCIDENTS, MSG, ORDERS
				BT 134217 received long range sniper fire. Fire was returned, and the VC broke contact.
				A VC from the 519th Bn surrendered to C Company in the vicinity of BT 0721. VC had the following equipment: 1 knife, 2 grenades, and a pack. Total VC apprehended for the period: 1 PAVN rallier.
			182400H	Summary of operation Harvest Moon for the period 180000H to 182400H. At 180800, a VC threw grenade at elements of C Company vicinity BT 170221. VC was KIA. At 181330H, battalion forward and rear elements taken under heavy fire by mortar, recoilless rifle, and automatic weapons. Estimated size of VC unit a battalion minus. VC WIA confirmed enemy unit as the 80th Battalion of the 1st Regiment. Location of contact: Ky Phu Hamlet, grid square BT 2122. VC were well camouflaged and dug into concealed positions. Weapons known to have been employed by the VC forces were 81mm mortars, 60mm mortars, 57mm recoilless rifles, .50 caliber machine guns, and other small arms. All VC contacted were well armed and equipped. Total VC KIA, POW, and equipment as follows: VC KIA--105; est VC KIA--75; POW--2, both WIA; equipment: 6 BAR's, 6 M-1 rifles, 3 carbines (US), 1 Enfield rifle, 1 MAS-36 rifle, 2 .30 caliber MG's with 1 set of tripods, 4 French submachine guns, 1 US Thompson SMG, 1 Chicom MG, 1 Chicom carbine, 2 Chicom rocket launchers, 1 60mm mortar, 1 81mm mortar tube, 2 AN/PRC-10A radios set on frequency 45.3, and 1 .30 caliber MG. Documents captured include booklets with VC names, sketch maps of area along National route 1, and sketch map of Ky Phu Hamlet and contact area.
			192400H	Summary of operation Harvest Moon for the period 190000H to 192400H. At 191130H,

\ppx31

Virtual VA 06/22/07
(213/CAT. 16)

DECLASSIFIED

August 24, 2007

James L Kisor
[redacted]

Mr. Craig Moore
Acting Regional Director
Department of Veterans Affairs
Regional Office
Federal Building
1220 S W Third Avenue
Portland, OR 97204

CERTIFIED MAIL/RETURN RECEIPT
Hand Delivered

SUBJECT: NEW AND MATERIAL EVIDENCE SUBMITTED TO REOPEN 1982 PTSD CLAIM

Dear Mr. Moore:

This letter has reference to BOTH of my following described VA claims:

RECEIVED
VARO PORTLAND, OR
AUG 24 2007
MAIL OPERATING CENTER

1. **Currently pending second application**/claim for service-connection for Post Traumatic Stress Disorder ("PTSD" herein) benefits, which I HAND DELIVERED" to the Portland VA Regional Office on June 5, 2006, concerning which no decision has been made to date.

2. **Original 1982 application**/claim for service-connection for PTSD benefits dated December 3, 1982, which the Portland VA Regional Office DENIED on May 9, 1983, causing me to file a NOTICE OF DISAGREEMENT letter dated May 24, 1983.

Significantly as concerns my above referenced now decades old meritorious original 1982 PTSD claim which was improperly denied by the Portland VA Regional office during 1983, VA statute law provides as follows at Title 38 United States Code, Section 5108:

> "Reopening disallowed claims
> If new and material evidence is presented or secured with respect to a claim which has been disallowed, the Secretary *shall* reopen the claim and review the former disposition of the claim." *(emphasis added)*

In accordance with that clear CLAIM REOPENING mandate in law, I hereby present the following NEW AND MATERIAL EVIDENCE which I recently secured:

1. "COMBAT ACTION RIBBON"

By written notification dated July 2, 2007, I was awarded a U.S. Marine Corps "COMBAT ACTION RIBBON" ("CAR"), from the National Personnel Records Center (Navy Personnel Command Retired Records Section), which Ribbon was typed to the front of the: "TRANSMITTAL OF AND/OR ENTITLEMENT TO AWARDS" form: "NAVPER 1650/65" dated: July 2, 2007. Accordingly, please find attached to this letter a true copy of my above described CAR award FORM,

which I hereby submit as "NEW AND MATERIAL EVIDENCE" marked: "EXHIBIT A".

2. "CURRENT PSYCHIATRIC EVALUATION REPORT DIAGNOSING SEVERE CHRONIC PTSD"

On June 27, 2007, I participated in an extensive interview and review of my medical records with Psychiatrist Donald L. Davies, M.D, which resulted in a 12 page Medical Report (and 1 page Curriculum Vitae) dated July 20, 2007, diagnosing severe Post-Traumatic Stress Disorder, Chronic, related to my military duties in Vietnam when serving in the 2nd Battalion, 7th Marine Regiment ("2/7") under Command of Lt. Col [redacted]. The VA has been aware since my 1982 PTSD claim, that I directly participated on combat Operation Harvest Moon and, in particular, the ambush of 2/7 by the 80th VC Battalion in the vicinity of Ky Phu village when I killed 2 VC snipers. Marine Corps records included in this letter and attachments, clearly evidence the fact that just during the ambush phase of Operation Harvest Moon, that 11 Marines from 2/7 were killed and 71 wounded. Additionally, 104 VC were killed in action. The entire Harvest Moon combat operation resulted in 45 Marines killed and 218 wounded. Additionally, 407 enemy Vietcong killed in action. Accordingly, please find attached to this letter as "NEW AND MATERIAL EVIDENCE", the original above described medical report/diagnosis from Dr. Davies, marked: "EXHIBIT B".

3. OFFICIAL U S MARINE CORPS "AFTER ACTION REPORT" CONCERNING OPERATION "HARVEST MOON" AND THE VC AMBUSH AT KY PHU.

Please take specific note of the December 18, 1965, entry which appears on my: "COMBAT HISTORY-EXPEDITIONS – AWARDS RECORD" document in my Marine Corps "Service Record Book" ("SRB") on Form: "NAVMC 118(9)-PD (REV. 11-55), and evidences in pertinent part, the following:

> "PARTICIPATED IN OPERATION 'HARVEST MOON', RVN" from "DEC 9 1965 TO DEC 18, 1965."

In that regard and in order to facilitate your immediate REOPENING and re-adjudication of my 1982, PTSD claim, as well as to enable the Rating Board to understand the extent of the carnage, suffering, death, sacrifice, etc., which took place during Operation Harvest Moon and, in particular, the lethal VC ambush at Ky Phu, I have located the official Marine Corps "AFTER ACTION REPORT concerning "OPERATION HARVEST MOON" DECEMBER 1965. Accordingly, please find attached to this letter as "NEW AND MATERIAL EVIDENCE" a complete copy (6 pages long) of the above described "AFTER ACTION REPORT" marked: : "EXHIBIT C", which I copied from an Internet website, such as the following examples:
http://www.3rdmarines.net/Vietnam_operation_harvestmoon2.htm and
http://www.l33nemvets.com/Vietnam_operation_harvestmoon2.htm.

4. MARINE BUDDIES KILLED IN ACTION IN VIETNAM *

The following is a partial list of my fellow Marine Buddies who were Killed In Action (KIA) when serving in Vietnam. List does NOT include many more wounded.

The names followed by a single asterisk (*) identify those Marines who died in my 2/7 Regiment. Names followed by a double asterisk (**) identify those Marines who died in H&S Company and my Communications Platoon. Names followed by triple asterisks (***) were bootcamp Platoon #377 buddies:

NAME	RANK	BRANCH OF MILITARY	SERIAL#	DATE KILLED IN ACTION
[redacted]				

* List not all inclusive – only includes my buddies that I know were killed.

Additionally, during Operation Harvest Moon, when the Viet Cong ambushed my battalion in the village of Ky Phu, I was with H&S Company in the open paddies west of the hamlet and under a hail of incoming fire. It was then that I personally killed 2 Viet Cong snipers with my M14 rifle as their heads emerged from spider traps. This fact has tormented me during the past 41+ years. At that same time [redacted] - - one of my Marine buddies in our 2/7 Communications Platoon - - was killed when a Viet Cong bullet ripped into his throat. I will never forget seeing his dead body. It also had a strong impact on me when [redacted], another Marine buddy in my 2/7 Communications Platoon - - was shot in the head at the same time as [redacted]. I can still see [redacted] in my minds eye, lying on a stretcher in Ky Phu village, waiting to be evacuated by helicopter. My exposure to in-service stressors related to combat is beyond dispute.

You are aware that my now having been awarded a USMC "Combat Action Ribbon" presumptively establishes that I engaged in combat with the enemy while I was serving in Vietam during 1965 and 1966 as a member of the 2nd Battalion, 7th Marine Regiment/ Infantry Battalion, and should be enough given the totality of the circumstances as outlined herein, to establish "the claimed in[-]service stressor" and thus, presumably, combat status, see 38 C.F.R. 3.304(f)).

As concerns the legal duty for the Portland VA Regional Office to immediately REOPEN my 1982 PTSD claim based upon submission of the above identified **NEW AND MATERIAL EVIDENCE**, and expedite a new decision, please note the following highly relevant excerpt from a decision by the United States Court of Appeals for Veterans Claims:

"A. Reopening
The RO denied the appellant's claim for service connection for PTSD in a June 1985 decision. R. at 77. That decision is final and may not be reopened unless, pursuant to 38 U.S.C. 5108, "new and material evidence" is presented or secured with respect to the claim. See 38 U.S.C. 7105(c). Evidence is "new" if it is not merely cumulative of prior evidence of record; evidence is "material" where it is relevant to and probative of the issue at hand and where there is a reasonable possibility that, when viewed in the context of all the evidence, both new and old, it would change the outcome. See Evans v. Brown, 9 Vet.App. 273, 283-84 (1996); Struck v. Brown, 9 Vet.App. 145, 151 (1996); Blackburn v. Brown, 8 Vet.App. 97, 102 (1995). The determination as to whether evidence is "new and material" is a question of law, subject to de novo review in this Court under 38 U.S.C. 7261(a)(1). Masors v. Derwinski, 2 Vet.App. 181, 185 (1992). *Here, the evidence secured since the June 1985 decision includes (1) Bureau of Naval Personnel and NPRC documents indicating that the appellant had been awarded the Combat Action Ribbon and (2) the November 1993 VA examination report diagnosing severe, chronic PTSD related to the appellant's duty in Vietnam. These items are "new" because they are not cumulative of evidence that was before the RO in June 1985. They are "material" because they are relevant to and probative of whether the appellant currently has a medically diagnosed case of PTSD that is causally related to his service, see Struck v. Brown, 9 Vet.App. 145, 151 (1996), and because, when viewed in the context of all the evidence here, they create a "reasonable possibility" of changing the outcome.* Blackburn v. Brown, 8 Vet.App. 97, 102 (1995). . . "

SOURCE: Marcoux v. Brown, 10 Vet.App. 3 (1996).

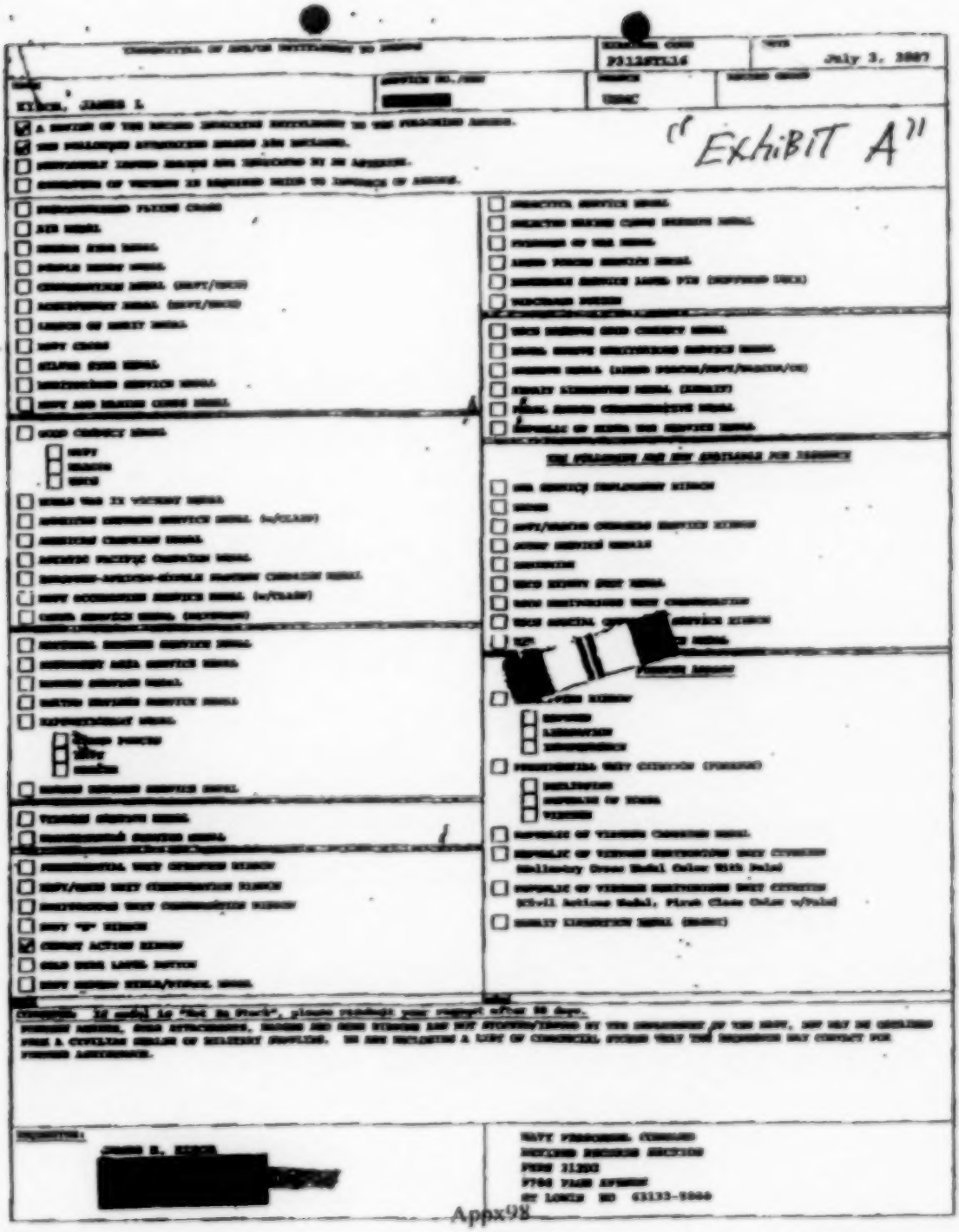
Please know that I continue to be very troubled when I think about the Portland VA Regional Office DENIAL of my 1982 Meritorious PTSD claim in the face of my having then directly participated in more than 50 meetings/sessions at the Portland Vets Center, combined with the fact that the Vet Center Manager David Collier M.S., had then concluded in his February 14, 1983, letter that my *symptoms* were consistent with PTSD. Additionally, when the VARO denied my 1982 PTSD claim, it clearly made NO effort to explore my eligibility for a USMC "Combat Action Ribbon" ("CAR"), even though the involved VA adjudicators must have known that I never could have been awarded a CAR by reason of the fact that I was separated from the Marine Corps during 1966, but the CAR award wasn't created until 1969 – but made retroactive. How could VA adjudicators deny my claim, knowing that I had participated in extremely bloody and lethal Operation Harvest Moon and the ambush at Ky Phu? Additionally, I will never understand why the then involved VA adjudicator DENIED my PTSD claim, knowing that the VA record clearly revealed that VA psychiatrist Henderson had clarified that a portion of the VA ordered psychiatric examination records had been "LOST" - - - but thereafter provided a diagnosis notwithstanding that fact My subsequent request that another VA psychiatrist examine me, was totally ignored by the Portland VARO. The United States Constitution which I was injured in combat defending on a foreign battlefield, guarantees me the right to "Due Process of Law" which is the right to a FAIR and IMPARTIAL government/VA process. The Portland VARO's handling of my 1982 PTSD claim, was neither "Fair" nor was it "Impartial."

Please immediately REOPEN my December 1982 claim for service-connection for PTSD, and review the disposition. Thank you.

Sincerely Yours,

James L Kizer

cc: United States Senator Ron Wyden



"EXHIBIT A"

Appx98

Exhibit B

DONALD L. DAVIES, M.D.
Psychiatry
3333 Mission Drive
Santa Cruz, CA 95065

CURRICULUM VITAE

QUALIFICATIONS:

EDUCATION:

Tulane University, 1968-1970
University of Miami, Miami, Florida, B.S., cum laude, 1970-1972
University of Miami, School of Medicine, M.D., 1976

TRAINING:

R-6 Intern, Herrick Memorial Hospital, Berkeley, California, 1976-1977
Psychiatric Resident, Herrick Memorial Hospital, 1977-1979

EXPERIENCE:

Staff Psychiatrist, Santa Cruz County Mental Health Services,
Santa Cruz, California, 1980-1981
Private Practice Psychiatry, Santa Cruz, California, 1980-Present
Medical Staff, Dominican Santa Cruz Hospital, Santa Cruz, California, 1980-1985

WORKER'S COMPENSATION:

Qualified Medical Examiner, State of California, 1994-1999

DONALD L. DAVIES, M.D.
Psychiatry
3333 Mission Drive
Santa Cruz, CA 95065

July 20, 2007 CONFIDENTIAL, FOR ADMINISTRATIVE PURPOSES ONLY

Department of Veterans Affairs

Re: Claimant: James L. Kisor
Social Security No.: [redacted]

Dear Sirs:

The following report represents a three-hour interview with Mr. Kisor in my office in Santa Cruz on June 23, 2007. The following report will represent my findings in this extensive interview and my review of medical records provided me by Mr. Kisor. Mr. Kisor sought psychiatric evaluation for a determination as to any possible psychiatric disability he may have sustained as a consequence of his military service. My findings will be described with respect to the interview, and the medical records he produced, with a discussion of the diagnoses. And based on his diagnosis, the issue of permanent disability will be addressed, if applicable.

IDENTIFYING INFORMATION:

Mr. Kisor is a 64-year-old married man, currently living in Scappoose, Oregon. He is currently retired from the recycling metal business, a position he states he worked in until 1998, when he was laid off. Since that time, he has had one additional episode of formal employment, lasting approximately six days. Subsequently, he was on Unemployment until his benefits ran out.

At this time, Mr. Kisor makes some income picking up and selling scrap metal. His wife works. He has been drawing Social Security benefits for approximately one year.

The claimant describes attending a Veterans outreach program sometime in late 1981. He recalls sometime in 1981 he went to the Disabled American Veterans association and applied for disability benefits, alleging he had incurred trauma from his military service. He states that he was denied at this point. He has reopened his application sometime in 2005. The claimant states he has not received any psychiatric treatment at this time.

HISTORY OF PRESENT ILLNESS:

Mr. Kisor states that he enlisted in the Marine Corps in November of 1962. He served in Vietnam between July 1965 and May of 1966. He was discharged from the Marines in November of 1966, as a private first class-E2. He states that he received two medals, one for national defense and the other for good conduct. Subsequently, his unit received two Presidential citations and a Navy unit citation. Mr. Kisor states that he worked in communications as a field wire man. During his service in Vietnam, the claimant was involved in two well-known military operations. One of these was called Harvest Moon, and the other was based on fighting in the general area of Qui Nhon in the central highlands, south of Da Nang.

With regard to his service in Vietnam, the claimant describes the Harvest Moon military operation. At this time, he was carrying two W-8 phones, in addition to a half-mile of wire. He also carried his M-14 with six magazines of ammunition, as well as his flak jacket, rations, and other equipment. At this time, the claimant forged the river during monsoon season. This was a harrowing and life-threatening situation for a number of reasons. First of all, the claimant states that the enemy "all knew where we are." He said ambushes in Vietnam were a frequent, if not constant, fact of military life. When he was between rice paddies and a hill, he was knocked down. At that point, he laid down. For an unknown period of time, he was unable to hear or see. Then he heard someone say, "Stay down." At that point, the claimant states that he crawled to another soldier. At this point, he had never fired his M-14 before. His gun did not fire properly, and this took, and this happened several times. At this point, he was under fire and a sniper was shooting at him and the men around him. Under fire, the claimant was able to shoot a sniper, who was popping up from a secured position, by timing his shot for when he anticipated the sniper would emerge from his hiding place to shoot. At this particular time, the company supply clerk was killed, and he fell running with the stretcher. He also saw a radio operator he had known for one year killed at this time.

On December 19th, the claimant states that, "The day after everything happened," he and the people in his unit were under fire. Fellow soldiers in the infantry were shooting over his head, and the claimant states he could easily have been shot. At one point, a 10- or 15-year-old boy was in the area. One of Mr. Kisor's fellow infantrymen shot this boy. This was extraordinarily upsetting for Mr. Kisor, and he said, "You guys…why did you shoot that kid…." Subsequently, the claimant was not only upset but in fear and did his best to get back to base camp.

The claimant describes a subsequent military operation, Qui Nhon, that he was involved in. He described this as a search-and-destroy mission. The first sergeant was wounded in the head during this mission. At some point, this particular sergeant was wounded in the head and subsequently died. During this mission, the claimant states he agreed to walk point, as he actually felt it was safer, if there was to be an ambush. At some point during the maneuver, Mr. Kisor states that he and his two or three soldiers were told to go left. Subsequently, they had no radio contact or support. Under fire, they went for cover, and the claimant recalls hearing bullets zipping past his head. He had no compass and no map. They were uncertain how to get out of there, as there was no radio contact. The claimant states that this was a dangerous situation and he felt unsupported in it.

Another incident happened during the Qui Nhon period. The claimant states that he volunteered for a night patrol, following external hemorrhoid surgery. He remembers being ambushed during that time. At one point he was threatened by an officer, who said to Mr. Kisor after an order, "I'm God here...." The claimant recalls that it was a dark night and in the morning they had to clear anti-personnel mines, to avoid injury. During this mission there was another threat the claimant that he received from an officer. Mr. Kisor states that from the time you arrive in Vietnam, there are "opportunities for them to get to you; to ambush you." He said he was unable to relax, as there were constant tasks required of a radio operator, such as watching the switchboard, filling sandbags, and doing tasks both related specifically to his communications responsibilities, as well as other tasks in maintaining the camp.

The claimant describes with some difficulty an incident in which he had shot and killed a Vietcong who had been shooting at him and other soldiers on patrol. After the claimant had shot and killed this Vietcong soldier, he found himself wanting to turn his weapon on a particular sergeant who was in his line of fire and kill him because this sergeant had threatened him earlier in the day. This incident still causes Mr. Kisor great distress when he thinks about it.

By the late 1980's Mr. Kisor states that he became aware that his war experiences were definitely having an impact on his life and his capacity to work. He went to a Veterans Outreach program sometime, he recalls, in approximately December of 1980. Around that time, he had been fired from the County road department. He notes that December is a difficult time for him because it is an anniversary reaction related to his experiences in Vietnam and the Harvest Moon operation.

So, the claimant went to the Veterans Outreach program and attended group therapy. He recalls going once a week from sometime in 1981 until perhaps August of 1984. He believes that he got a job sometime in August of 1984. The claimant remembers that he was anxious, on edge, and vigilant during this time period. He was also easily startled. He was not placed on medication. He found himself easily overwhelmed. He had trouble making simple decisions of living, such as getting out of bed, reading the paper, and making simple judgments. Prior to 1980, the claimant states that he had been able to keep his war experiences in Vietnam out of his conscious thinking.

At this time, the claimant states that he has become increasingly aware of the impact of his Vietnam experiences on his life. He talks with a fellow veteran, who he refers to as "[redacted]," on a frequent basis. He finds this helpful. He says, "We are like twins, in terms of our problems. Irritability, flying off the handle." The claimant denies drug use. He states that when he was in Vietnam, there were no drugs available to soldiers. Though initially the claimant denied dreaming about Vietnam, he acknowledged that he *did* dream about "enemy tanks...we are all killed." He pointed out the fact that there were no tanks in Vietnam. The claimant is vulnerable to flashbacks. He says anytime he hears about the war in Iraq, he feels they are "going through the same things we went through in Vietnam. Every time I hear about a fatality, I flashback to Vietnam." He states that his flashbacks can be "anywhere, anytime." The content of his flashbacks includes seeing people crawling, thinking about the sergeant that he almost shot and killed because he felt threatened by this sergeant, or wondering why he survived and didn't get shot. The claimant is aware that there were a number of occasions where he could have been captured. The claimant recalls with great distress and anguish a captain who threatened to kill

him because he was filling his canteen, and the captain felt the claimant was "following orders." The claimant notes in the last four years when he goes out into the country, he finds himself thinking about Vietnam because of the overgrowth of trees he sees, which reminds him of his experience in Vietnam. The claimant pointed out that my office also reminded him of Vietnam, because French doors, which were open at the time of our interview, clearly display a thick undergrowth and bamboo trees.

Mr. Kisor has had a gradual realization of the impact his war experiences have had on his personal and vocational life. He states when he worked for the road department, he liked being away from people. He liked working alone. The claimant states that when he goes into a restaurant, he needs to sit in a place where he can watch the door. He is aware that he feels numb emotionally. He notes that other people are happy, and he will try to appear as though he is doing okay, though he states that in fact, "I do not feel happy." The claimant acknowledges that is a loner. He said before he went in to the military, he liked to socialize and do things with other people; now, he and his wife do not socialize much. He does not like parties. He says, "I can't tell you why I don't like them." The claimant has an adult son and daughter, who live in Oregon. He says occasionally his son will drop in on him, though more often, he will see his son at his father-in-law's house. The claimant denies any church affiliation. He has a membership in a local Moose lodge, though he says he rarely attends. When he does, he talks only to a couple of people and tends to isolate himself. The claimant has few hobbies. He used to enjoy hunting and fishing. He does not want to do this anymore. The claimant states in the 1970's he was almost shot by a nephew, so he no longer likes to participate in this activity. Also in the 1970's, he was fishing and a barge "cut loose." He said, "We could have drowned." He felt a feeling of threat and has not fished in the last 27 years. The claimant does have a vintage model Chevy. Occasionally, he will attend a car show. He thinks the last one was approximately three years ago. He likes the activity and feels a certain anonymity, by being in a big crowd. The claimant states that he does not drink now. He notes that after some of the veterans' meetings that he was doing in the 1960's, he would drink until he was falling-down drunk, then he would drive home. He says he has probably not had any alcohol in the last 20 years.

DAILY ACTIVITIES:

The claimant describes his daily activities as follows. He gets up in the morning, sees his wife off to work. On Mondays, he will do the wash, clean the house, and mop the floors. He may pick up some scrap metal in the afternoon. He will get the mail. He watches TV and takes care of the yard. He will work on his truck. All his vehicles were acquired before 1974. He says if he's around the house, he usually doesn't leave the property. Stated differently, he said he wouldn't leave the property unless he had to. When he does have to go off the property, he tries to schedule his time away so he won't encounter crowds of people. He tries to do everything in the morning, his appointments with physicians he likes to have early in the morning so as to encounter the fewest people. The claimant states that he wakes up every hour or two, then goes back to bed for another hour or two sleep. Sometimes, he wakes up refreshed; sometimes, he wakes up tired. He says his energy is sometimes good. He says most of the time, he feels as if he is marking time, and said he's "waiting for the guy to take me." He states he has difficulty enjoying himself and feels grumpy 90 percent of the time. He acknowledges having had strong suicidal feelings and impulses on several occasions. When this was further discussed, he said that he had a "handle on it," with reference to these suicidal feelings.

SOCIAL HISTORY:

The claimant was born in Portland, Oregon, and grew up in and around Portland. When the claimant was at age five, the family moved to Beaverton. He graduated at Sunset High School in approximately 1962. He had a C average.

After the military service, the claimant had an A.A. in Applied Science, and he used the G.I. Bill to go through school.

He married in 1968. With regard to his wife and his marriage, he claims that he has been nasty and irritable to her, especially before he quit drinking alcohol. The claimant states that he does the housework, and he prepares his own food. He acknowledges that sometimes he is appropriate with his wife and other times he is verbally abusive. The claimant states that when he is not calm and mellow, he can be easily triggered. Anything the claimant perceives as a threat to him, that is from a car, walking on the street, he said he will "go off instantly, screaming and cursing" at the person he feels has threatened him or impinged on him. He states that he can't stand "boom boxes." The claimant has a married son, age 37, who lives in Scappoose, Oregon. His daughter is 36 years old, and lives approximately an hour's drive away. She has one son.

As mentioned earlier, the claimant has given up his hobbies of fishing and hunting. He does have a vintage Chevrolet, and has some occasional social activity around his car, though he said he last attended a formal car show three years ago.

MENTAL STATUS EXAMINATION:

The claimant flew to San Jose Airport, rented a car, and drove to Santa Cruz, where he was seen in my office for approximately a three-hour appointment. He was casually-dressed and well-groomed. He was somewhat balding. The claimant looked his stated age. He described himself as in excellent physical health. The claimant had some range of affect, and there was clear sadness as he described some of his war experiences. The claimant knew the current and previous presidents, going back to President Reagan. Short-term memory was impaired, as he recalled only three of six objects over a three-minute period. Judgment was tested and grossly intact, though there was some tendency to explain why people were required to have a driver's license in a concrete manner. For most of the interview, the claimant's affect was blunted, though as noted earlier, the claimant did show sadness when talking about war experiences. He was able to do simple calculations and multiplications within normal range. The claimant was able to describe the difference between a mistake and a lie, though he needed an example to do this. The claimant had difficulty explaining the difference between a child and a dwarf. The claimant had difficulty interpreting proverbs.

The claimant described sleep disturbance, with frequent awakening throughout the night. Energy was variable. The claimant described anhedonia or difficulty enjoying himself. He described irritability and moodiness, with respect to his wife. The claimant states that he is socially withdrawn, and is easily triggered when he feels there has been some type of threat made on him, whether it be him walking on the street or in the car. He described social

withdrawal, few friendships, limiting social activities to times when he will not be around crowds, and few social interactions with friends or family.

Prominent symptoms of post-traumatic stress are described. By way of summary, the claimant states that he is socially withdrawn. The claimant has blunted affect, and there is clear irritability, explosiveness, and verbal abuse to his wife and anyone who he feels threatens him. The claimant has dreams that reflect a sense of danger and threat, especially when these are "enemy tanks and we are all killed." Flashbacks can be triggered by hearing about the Iraq War in general, or the fatalities that are taking place there, in particular. He can have flashbacks anywhere and at any time. The claimant finds himself frequently ruminating about the war and certain circumstances of the war. These include: "see people crawling," wondering why he survived; not get shot; could have captured us...; the captain who threatened him, because he was drinking water; and the sergeant he wanted to shoot because he felt the sergeant had previously threatened his life. The claimant is also triggered when he is out in the country and he sees a lot of trees. The claimant has difficulty around December, because it reminds him of the Harvest Moon operation, by way of an anniversary reaction. An additional obvious post-traumatic component to the claimant's life is the fact that whenever he feels threatened, he responds explosively. This perceived threat runs throughout his history in many different forms, and the response of explosiveness is an attempt to create a feeling of power in a situation where he feels very helpless. The claimant also has insomnia, which is common in Post-traumatic Stress Disorder.

MEDICAL RECORDS REVIEW:

1. There is an undated typewritten note, apparently from the claimant, with a handwritten note underneath it. In the typewritten part, he states, "What I understood from talking with you on December 24, 1981, that every time I had something that I did not like happen to me in the Marines, I would throw it to the back of my mind, so that later on without understanding why, I would be defensive towards a woman or superintendent or anyone with the authority to boss. And that after a few years of this and the time spent in Nam, which these things were magnified more because everything was put in life-threatening to me, and the return of the U.S., even when things didn't go right, would build up until I would explode to the point of fighting if need be or overprotecting of those put in my care." Underneath it is a handwritten note from the claimant, and he states that he wrote this letter after the first time he went to a V.A. Outreach office and talking to the head doctor. He noted after the meetings that took place there, he would go out and get drunk.
2. There is a letter dated February 14, 1985, from a David E. Collier, M.S. Counselor, Portland Vet Center. In the letter, and I quote, he states, "Subsequent involvement in group and individual counseling identified additional concerns that Mr. Kisor had towards depression, suicidal thoughts, and social withdrawal. This symptomatic pattern has been associated with a diagnosis of P.T.S.D. (DSM III, 309.81).
3. There is an updated P.T.S.D. Disorder Questionnaire that is filled out and it is an excellent summary of the claimant's war experience, and I will have it Xeroxed and placed at the end of my report. It confirms the claimant's history to me of the two major battles he was in in Vietnam, that being combat operation Harvest Moon and, secondly, the battle at Chulai and Qui Nhon.

4. There is a report from social worker Arnie Chenifin, M.S.W., Clinical Social Worker, dated February 11, 1983. The social worker states, "Mrs. Kisor feels her husband can't stand the pressure of a job around other people. He was so hard to live with when he worked for the county road department. He seemed to bring all his problems home at night and she just couldn't handle it. He would blame her or tend to turn his feelings against her if something had happened during the day." He goes on to state, "He is much easier to live with since he has not been working, and has been more helpful also." In this report, Mr. Chenifin describes Mrs. Kisor saying that the claimant is "a loner, he tends to do better working as a loner, by himself."

   Under a section labeled "Medical," Mr. Chenifin notes that the claimant started drinking heavily on weekends after he returned home from Vietnam. He felt somewhat alienated from people. He couldn't seem to make friends without a lot of effort. He described graphically his fights on different jobs that he had. (The claimant has told me pointedly that these fights were verbal, not physical, at work.)

5. There is a psychiatric examination and Post-traumatic Stress Review dated March 2, 1983. Toward the end of the report, Dr. Henderson states a portion of the original dictation on this P.T. examination has been lost. The doctor goes on to state that he was able to recall enough information to render an opinion, as well as to recall what his diagnostic impression was at the time of the dictation. He said the review of symptoms related to the P.T.S. criteria was "not available, either in the report or in my memory. However, I do recall my distinct impression that this man suffers from a personality disorder, as opposed to P.T.S.D." Under his impression, he said that he felt the claimant suffered from an emotional disturbance and personality disorder related to issues of control and anger engendered when he feels that other people have power over him. He recalls that he was not impressed with the finding of P.T.S.D. His Axis I diagnosis was Intermittent Explosive Disorder, Axis II diagnosis Atypical Personality Disorder.

DIAGNOSIS:

DSM IV:

AXIS I

1. Post-Traumatic Stress Disorder, Chronic, 309.81
2. Alcoholic dependence, in remission.

AXIS II

No diagnosis.

AXIS III

1. The claimant describes good health and is being treated at Kaiser in Oregon.

AXIS IV

Psychosocial and Environmental Problems: The claimant has difficulty

deriving adequate support from his social environment, has no significant friendships outside his family. The claimant has had repeated vocational difficulties, based on his inability to manage authority. This is a problem stemming directly from his military service.

AXIS V

Global Assessment of Functioning Scale: GAF is 40. Mr. Kisor has major impairment in several areas, such as vocational, family relationships, and psychological functioning, based on symptoms consistent with Post-Traumatic Stress Disorder.

DISCUSSION OF DIAGNOSIS:

The diagnosis of Post-Traumatic Stress Disorder, Chronic, is indicated. There are four major criteria required for the diagnosis of Post-Traumatic Stress Disorder. The first is that the individual has been exposed to a traumatic event in which the following are present: 1) The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury. 2) The person's response involved intense fear, helplessness, or horror. From my history, it is clear that the claimant was involved in two major campaigns in Vietnam in which his life was threatened, in which he witnessed deaths of fellow soldiers, and on one occasion in which he witnessed a civilian atrocity which was very upsetting to him. The claimant clearly experienced fear, helplessness, and horror at the events he encountered during Operation Harvest Moon and the fighting that took place in Qui Nhon. The claimant's history is consistent with the history that he presented in 1983 to Dr. Robin Henderson. Based on information Mr. Kisor provided me from the internet, I have written descriptions of Operation Harvest Moon, as well as the battle at Qui Nhon. It is clear that both of these battles took place and that there were many casualties on both sides.

Second diagnostic criteria ask that the traumatic event is persistently re-experienced in one or more of five possible ways. The claimant describes recurrent images of distressing recollections of the event, including images and perceptions. For example, the claimant is triggered when he is in the country, around trees. At times, he sees people crawling. At times, he remembers with great distress his impulse to shoot and kill the sergeant he felt had threatened his life. The claimant has recurrent distressing dreams that are thematically related to his war experiences. These themes have to do with tanks and people being killed. Even though there were no tanks in Vietnam, the subject matter of the dreams is clear and relates directly to his war experiences of overwhelming horror and death. The claimant has physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event. He is easily irritated or flies off the handle when he perceives threat. This happened in his former place of employment. It happens with his wife, and it can happen when he is in the car, or when he hears loud noise, such as "boom boxes." The claimant acknowledges that when he rages, he loses control, screaming and yelling and cursing loudly. And, lastly, the claimant has intense psychological distress at exposure to internal or external cues that symbolize the traumatic event. Specifically, the claimant finds himself triggered when he hears about details of the Iraq War on the media, and he is especially disturbed when he hears of an American fatality relating to the war.

The third area needed to diagnose Post-Traumatic Stress Disorder involves persistent avoidance of stimuli associated with the trauma, and numbing of general responsiveness, as indicated by three or more of the following symptom clusters. The claimant struggles to avoid thoughts, feelings, or conversations having to do with the trauma of war. Specifically, he is socially isolated, with few friends. He has quit hunting and fishing. Interestingly, both of these areas of his hobbies have been intruded upon by experiences that he felt in danger of his life. Simply put, the claimant has limited his life in many ways to attempt to avoid rekindling thoughts or associations related to war experiences. The claimant avoids activities, places, and people that arouse recollections of the trauma. This is one of the reasons the claimant is a loner and had difficulties while working under supervision in the labor force. The claimant has adjusted his entire life to avoid people and loud noises or startling experiences in social situations. The claimant has markedly diminished interest or participation in significant activities. As noted before, he has quit hunting and fishing. He rarely goes to the Moose Lodge. He has no significant friendships. He goes out in public only when he has the confidence that he will encounter very few people. The claimant clearly feels detached and estranged from others. He has difficulty enjoying himself. He recognizes that he has been emotionally abusive to his wife at times. The claimant has a restricted range of affect, as I've noted in my mental status examination, and his own self-report is that he feels numbed emotionally. He has intermittent symptoms of depression and at times has been suicidal.

The fourth area to be considered in diagnosing Post-Traumatic Stress Disorder has to do with "persistent symptoms of increased arousal, as indicated by two or more of the following." The claimant has persistent insomnia, waking up every hour or two. Episodes of irritability, outrage, and anger are frequently described, going back to the reports in my medical records review, as well as the self-reports at the time of this interview. The claimant acknowledges hyper-vigilance, and like many veterans, must sit in a restaurant where he can see the door. He has an exaggerated startle response, and this is one of the reasons he is so upset by loud noises and "boom boxes." The noise from those radios overwhelms his sensory barrier and causes him extreme difficulty, and he reacts with rage. This is an example in his life of an exaggerated startle response.

Mr. Kisor is symptomatic with regard to his P.T.S.D. and is easily triggered by events in the outside world. He has continued to circumscribe his social and vocational world so that he can feel safe and avoid the triggers that are so ubiquitous when he leaves the home. When working in the labor market, the claimant was re-traumatized in his contact with supervisors. I will address this issue in more detail in a subsequent paragraph. At times, Mr. Kisor has flashbacks and intrusive memories which disrupt his daily living and limit his willingness to enter friendships. Outside his family, Mr. Kisor has not developed any other significant friendships. He is socially withdrawn. Like many war veterans, Mr. Kisor is haunted by certain experiences and images from the war. During our interview, he asked about writing the sergeant that I referred to several times a letter in an attempt to tell him about his impulse to shoot the sergeant based on an earlier contact. I explained to Mr. Kisor that this was a matter to be resolved in counseling. The claimant has had difficulty in the open labor market with supervisors, in controlling his irritability and rage. I believe the adequate understanding of this difficulty since Vietnam was written very well by the claimant himself following a counseling session in

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December of 1981. This is in my medical records review, and I will refer to it in summary form here:

> "What I understood from talking with you on December 24, 1981, (was) that every time I had something that I did not like happen to me in the Marines, I would throw it to the back of my mind, so that later on without understanding why, I would be defensive to a foreman or superintendent or anyone with the authority to boss."

This one statement made by the claimant following a counseling session, where he had been helped to achieve insight into some of his personality dynamics, is very revealing. It should be remembered that the claimant often drank after counseling sessions at the V.A. and at one point got a D.U.I, which subsequently led him to discontinue drinking entirely. To summarize this, the claimant has modest resources in dealing with the overwhelming traumas that he experienced in Vietnam. he used the strategy of repression of all his feelings and memories until they erupted in or around 1980. At that point, he had difficulty dealing with his feelings, and became to self-medicate with alcohol. After several years of treatment, he left the V.A. center. However, the irritability, projection, and distortions that he acquired in dealing with the trauma of Vietnam have continued with him until this day. I believe, at best, Dr. Robin Henderson simply misunderstood the impact of the claimant's war trauma upon him, and this may have something to do with having lost a significant part of the original P.T.S.D. examination. As the doctor said specific review symptoms of P.T.S.D. criteria were not available in the report or in the memory of the physician. However, the doctor's report does clearly describe changes in the claimant's personality function, irritability, and explosive rage. The doctor's social worker, Mr. Chenifin makes it clear that the claimant was unable to stand the pressure of a job or be around people. He did much better when he was no longer working. Especially important in Mr. Chenifin's report is the notation that the claimant began heavy drinking when he returned from Vietnam. He was alienated from people. He couldn't seem to make friends. He got in fights at work. These symptoms described by the social worker seem, through the lens of the claimant's Post-Traumatic Stress Disorder, make it clear that the claimant was evincing symptoms of P.T.S.D. back in the 1980's. Stated simply, the claimant had irritability, difficulty managing his feelings, he felt alienated from people, and was unable to manage his feelings when they began to break through the repression that had kept him out of awareness for approximately 15 years. Further confirming this perspective is the letter dated February 14, 1983, from David E. Collier, M.S., Counselor at the Portland Vets Center. He said, "Subsequent involvement in group and individual counseling identified additional concerns that Mr. Kisor had towards depression, suicidal thoughts, and social withdrawal. This symptomatic pattern has been associated with a diagnosis of P.T.S.D." (Emphasis mine.)

In summary, the claimant's psychiatric record, as provided me, as well as my clinical interview with the claimant, are in complete accord with what the claimant is experiencing and has been experiencing the effects of chronic Post-Traumatic Stress Disorder for approximately the last 27 years. The claimant fulfills all four major criterion for the diagnosis of Post-Traumatic Stress Disorder. The claimant's symptoms are severe, and they have caused enormous distress in his personal life, have caused him to withdraw socially. He is alienated from friends and has a difficult relationship with his wife because of irritability and explosiveness. This symptom picture is common, in my experience, in individuals with chronic Post-Traumatic Stress Disorder.

TREATMENT INDICATED:

Mr. Kisor is in need of psychiatric treatment and support. He should be in counseling with an individual who understands the nature and fragility of an individual with chronic post-traumatic stress. Specifically, Mr. Kisor has limited psychological resources to deal with the trauma that he experienced in Vietnam. Following group therapy in the 1980's, the claimant would go out and drink alcohol. This reflects his inability to process or metabolize some of the material that was being brought to attention during the sessions. Mr. Kisor needs supportive psychotherapy. He should avoid any therapy which has to do with uncovering, as this will be re-traumatizing for him. The therapist needs to understand the claimant's psychological resources for dealing with his distress are limited and work carefully so that the claimant is not further traumatized or triggered by the therapeutic process itself. At times, the claimant experiences periods of depression and may be in need of psychiatric evaluation for an antidepressant. If the claimant becomes suicidal, special attention should be given him with regards to treatment and the possibility of antidepressants.

PERMANENT DISABILITY DETERMINATION:

Mr. Kisor has an ongoing, permanent psychological disability based on chronic Post-Traumatic Stress. His Post-Traumatic Stress Disorder continues to dramatically limit and circumscribe his circle of friends, his capacity to socialize with his family, and to participate in his community. The claimant has worked outside of formal employment since the 1980's, due to his conflicts with supervisors. As I have described elsewhere in this report, the claimant's difficulties with supervisors represents psychological displacement. Specifically, the claimant experienced several threatening situations from superiors while in Vietnam. He feared for his life in these circumstances. These experiences in Vietnam are reenacted when he feels threatened, especially by supervisors who may act in an unskillful way. As mentioned in the records review and elsewhere in this report, the claimant made a statement regarding this situation in December of 1981, which clearly described his tendency to displace or project onto authority figures unfinished emotional experience from his time in Vietnam. As a consequence of his difficulty with supervisors, the claimant has not been able to work in a formal vocational setting for over 20 years. He clearly has dramatic impairment in his capacity to work in the open labor market. It is my opinion that these impairments are a direct result of his war experiences in Vietnam and the subsequent disability that it has brought into his life.

In my clinical opinion, Mr. Kisor's Post-Traumatic Stress Disorder is severe, continual, and brings significant stress into his personal life. I have noted the enormous limitations it has placed on his work life. The claimant meets all four criteria for the diagnosis of a Post-Traumatic Stress Disorder. His history to me is consistent with the history he provided other examiners back in the 1980's, including social worker Chenifin and psychiatrist Robin Henderson. Dr. Henderson's report is most confusing, specifically on the page that is entitled "Addendum to Psychiatric and Post-Traumatic Stress Disorder Review." The doctor states that a portion of the original dictation on this P.T.S.D. examination has been lost, and then states, "Specific review of symptoms related to P.T.S.D. criteria was *not* available in either the report or my memory." The doctor then states that there is a recall that the claimant suffers from a Personality Disorder. As I have stated, I believe there has been a significant misunderstanding of the claimant's behavior,

in referring to it as a Personality Disorder. The claimant has projected his psychological distress onto a number of people in his environment, including supervisors and his wife. He has limited resources psychologically to deal with the stressors that he experienced as a combat veteran. These stressors have shown up in Post-Traumatic Stress and a tremendous deforming of his social and interpersonal world. Thus, the claimant has a Post-Traumatic Stress Disorder which is severe.

The claimant's history is consistent with his symptoms and the symptom severity is consistent with the report of his wife and the reports going back to the 1980's from Dr. Henderson and psychologist, Dr. Chenifin, as well as the counselor at the Vets Center, Mr. Collier, who noted the claimant's symptom pattern to be consistent with P.T.S.D. I have found nothing in the claimant's presentation, history, or records to suggest that he has misrepresented his military history, his symptoms, their severity, or the way in which they have manifested in his life, work, or family.

In summary, the claimant's reported symptoms are completely consistent with his history, the available medical records, and the known psychiatric literature for the presentation of Post-Traumatic Stress Disorder in one's life. It is not uncommon for war veterans to go years or decades before symptoms emerge. This is what took place when the claimant sought treatment in the early 1980's for his condition.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge. I will enclose a curriculum vitae to summarize my training and clinical experience.

Very truly yours,

Donald L. Davies, M.D.
Qualified Medical Examiner, 1996-August 2000

Dl.D/csd
Enclosures

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JAMES L. KISOR

VA File Number

Represented by:
DISABLED AMERICAN VETERANS FHF DAV 9-19-07

Rating Decision
September 18, 2007

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era and Peacetime. You served in the Marine Corps from November 6, 1962 to November 4, 1966. We received a request to reopen a previous claim on June 5, 2006. Based on a review of the evidence listed below, we have made the following decision(s) on your claim.

DECISION

Service connection for posttraumatic stress disorder is granted with an evaluation of 50 percent effective June 5, 2006.

EVIDENCE

- Claim received June 5, 2006.
- Posttraumatic stress disorder questionnaire.
- Service medical and administrative records for the period of November 6, 1962 to November 4, 1966.
- VCAA development letter dated September 15, 2006.

- Formal Finding of Information Required to Document the Claimed Stressor dated June 22, 2007.
- Medical records from the Portland Vet Center received July 3, 2007.
- Your statement dated August 24, 2007.
- Letter from Dr. Donald Davies dated July 20, 2007.
- VA examination dated September 5, 2007.
- Claims folder reviewed.

REASONS FOR DECISION

Service connection for posttraumatic stress disorder.

Your reopened service connected claim for posttraumatic stress disorder was received on June 5, 2006.

Since VA examination shows that you have been diagnosed with posttraumatic stress disorder due to your experiences that occurred in Vietnam and your service administrative records show that you are a combat veteran (Combat Action Ribbon recipient), service connection for posttraumatic stress disorder has been established as directly related to military service.

The above listed evidence has been received and reviewed. VA examination dated September 5, 2007 shows that you have been diagnosed with chronic and moderate posttraumatic stress disorder. The examination shows that you are married and occupationally retired. The examination shows that you are competent. The examination shows that you have had moderate social and occupational impairment. The examination shows irritability, disruption of attention and concentration, mild difficulties with motivation, mild suicidal ideation and reported difficulties falling and staying asleep. The examination shows no evidence of depression or any other coexisting mental health problems.

The VA examination and the evidence of record show that you warrant a 50 percent evaluation. An evaluation of 50 percent is assigned from June 5, 2006. An evaluation of 50 percent is assigned for occupational and social impairment with reduced reliability and productivity due to such symptoms as: flattened affect; circumstantial, circumlocutory, or stereotyped speech; panic attacks more than once a week; difficulty in understanding complex commands; impairment of short- and long-term memory (e.g., retention of only highly learned material, forgetting to complete tasks); impaired judgment; impaired abstract thinking; disturbances of motivation and mood; difficulty in establishing and maintaining effective work and social relationships. A higher evaluation of 70 percent is not warranted unless there are deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of

personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships

Service connection for posttraumatic stress disorder is granted with an evaluation of 50 percent effective June 5, 2006; date of receipt of reopened claim.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, www.va.gov.

Rating Decision	*Department of Veterans Affairs* *Portland VA Regional Office*			Page 1 09/18/2007
NAME OF VETERAN JAMES L. KISOR	VA FILE NUMBER	SOCIAL SECURITY NO	POA DISABLED AMERICAN VETERANS	COPY TO

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
11/06/1962	11/04/1966	Marine Corps	Honorable

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	2		None

JURISDICTION: Reopened Claim Received 06/05/2006

ASSOCIATED CLAIM(s): 024, Reopened Compensation, 06/05/06

SUBJECT TO COMPENSATION (1. SC)

9411 POSTTRAUMATIC STRESS DISORDER [PTSD/Medical/Veteran Evidence]
Service Connected, Vietnam Era, Incurred-COMBAT
50% from 06/05/2006

COMBINED EVALUATION FOR COMPENSATION:

50% from 06/05/2006

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC Peacetime, Vietnam Era)

9499-9400 ATYPICAL PERSONALITY DISORDER
Not Service Connected, Constitutional/Developmental Abnormality

9499-9400 INTERMITTENT EXPLOSIVE DISORDER
Not Service Connected, Constitutional/Developmental Abnormality

Steve Book, Rating Specialist

Appx35

NOTICE OF DISAGREEMENT
&
REQUEST FOR DE NOVO DRO REVIEW

November 30, 2007

James L. Kisor
VA C#

Department of Veterans Affairs
Regional Office
Federal Building
1220 Southwest Third Avenue
Portland, OR 97204-2825

HAND DELIVERED

REFERENCE: 348/216/dmr

KISOR, James Lee

SUBJECT: NOTICE OF DISAGREEMENT concerning Portland VA Regional Office RATING BOARD decision dated Sept. 18, 2007

Dear Adjudication Section:

Please reference my continuing PTSD claim, concerning which I hereby file my NOTICE OF DISAGREEMENT ("NOD") and request for appellate review as concerns the Portland VA Regional Office Rating Board Decision dated September 18, 2007, and the VA award letter dated October 11, 2007, which conveyed that decision to me. I also hereby request a de novo review of the Rating Board Decision by a Decision Review Officer ("DRO") in conjunction with this NOTICE OF DISAGREEMENT.

As concerns my above now asserted NOD, please be advised that I disagree with all the adjudicative determinations mentioned in the above referenced VA Rating Board decision and letter and any enclosures thereto, except for those, if any, that I specifically state here that I do not want to appeal. Therefore, my notice of disagreement specifically covers all the determinations made by the regional office unless specifically excluded. I also disagree with the VARO failure to adjudicate issues and claims it was required to adjudicate. I am specifically referring to issues that I may not have discussed but which were reasonably raised by the evidence in my VA claims file or in the VA's possession that should have been inferred by the regional office. This appeal also includes adjudicative determinations that were mischaracterized by the regional office. If this appeal is not resolved favorably by my requested DRO review, or

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otherwise, please send me a Statement of the Case so that I may appeal this decision to the Board of Veterans Appeals.

Specifically, among other Rating Board errors, etc., this NOD disagrees with BOTH the 50% DISABILITY EVALUATION assigned and also the EFFECTIVE DATE assigned to my now service-connected PTSD.

1. **DISAGREEMENT WITH 50% PTSD DISABILITY EVALUATION ASSIGNED**: Since I left the Marine Corps and returned to civilian life, I have continuously suffered from severe employment problems caused by my PTSD, which are a matter of record in my VA file and were before the Rating Board. In that regard, it was CLEAR AND UNMISTAKABLE ERROR for the 1983 VA Rating Board to ignore the significance of the CLINICAL INTERVIEW and medical diagnosis of PTSD by psychiatrist Dr. Donald L. Davies, which appears in his psychiatric evaluation and PTSD diagnosis dated July 20, 2007, wherein he asserts that I have been suffering from the effects of chronic PTSD "for approximately the last 27 years." Dr. Davies also specifically noted, in part, the following in his findings and diagnosis:

> "The claimant fulfills all four major criterion for the diagnosis of Post-Traumatic Stress Disorder. The claimant's symptoms are severe, and they have caused enormous distress in his personal life, have caused him to withdraw socially. He is alienated from friends and has a difficult relationship with his wife because of irritability and explosiveness. This symptom picture is common, in my experience, in individuals with chronic Post-Traumatic Stress Disorder.
>
> . . . .
>
> The claimant has worked outside of formal employment since the 1980's, due to his conflicts with supervisors. As I have described elsewhere in this report, the claimant's difficulties with supervisions represents psychological displacement .
>
> . . . .
>
> Thus, the claimant has a Post-Traumatic Stress Disorder which is severe.

Perhaps most significant, is that the September 18, 2007, Rating Board, appears to have ignored the significance of the AXIS V finding, as follows:

> "**Gobal Assessment of Functioning Scale: GAF is 40**. Mr. Kisor has major impairment in several areas, such as vocational, family relationships, and psychological functioning, based on symptoms consistent with Post-Traumatic Stress Disorder."

There is overwhelming evidence of severe PTSD devastating my ability to work. Based upon my employment history records in my VA file and before the Rating Board which I cite as follows:

a. NATIONAL APPLICANCE COMPANY's two page letter dated August 3, 1973.
b. COLUMBIA COUNTY ROAD DEPARTMENT's two page letter dated June 5, 1979.

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c. COLUMBIA COUNTY BOARD OF COMMISSIONERS two page letter dated January 6, 1982.

d. Letter dated February 14, 1983, from David E. Collier, MS - Counselor for the Vet Center, which focuses, in part, on my continuous problem controlling anger and dealing with people in authority positions, which caused my decades long employment problems. I had weekly counseling sessions at the Vet Center for more than one year, which ultimately gave rise to Collier's letter linking my demonstrated symptoms with PTSD -- but ignored by the 1983 VA Rating Board

e. It has been my long time understanding that VA and the Social Security Administration(SSA) work closely together and exchange information -- such as my employment history revealed by taxed Social Security earnings. It is now my understanding that neither the 1983 PTSD VA Rating Board -- NOR -- the recent 2007 Rating Board, obtained from SSA my employment history from 1962 through 2003. Accordingly, I have obtained a copy and submit attached to this NOD and DRO review request, the SSA employment history BREAKDOWN. Please note the 16 years between 1967 which was the first year after I was separated from the Marine Corps, and my 1982 initial VA claim for VA PTSD --- which verifies my severe employment problems because of my severe PTSD during all of those years and continuously to date.

Based upon the evidence in the Record as a Whole; documented continuous severe employment problems at all times material 1966, to date; the psychiatric report and diagnosis by psychiatrist Dr. Davies, M.D., in particular my Global Assessment of Function ("GAF") score of 40, which indicates some impairment in reality testing or communication, or major impairment in several areas, such as work, school, family relations, judgment, thinking, or mood, the September 18, 2007, Rating Board clearly failed to understand the significance of my GAF score of 40. Significantly, a score of 31 to 40 indicates some impairment in reality testing or communication, or major impairment in several areas, such as work, school, family relations, judgment, thinking, or mood. The record clearly establishes my major impairment in attempted employment during the past 40 years.

2. <u>DISAGREEMENT WITH ASSIGNED EFECTIVE DATE OF JUNE 5, 2006</u>:

Based upon the RECORD AS A WHOLE, the September 18, 2007, Rating Board should have established the effective date of my PTSD claim as being: December 3, 1982, which is the date upon which I filed my original claim for service-connected PTSD disability compensation. It was CLEAR AND UNMISTAKABLE ERROR (CUE) for the Rating Board to have assigned the December 3, 1982, date of my original claim, for the following reasons:

a. When I and my witness first reviewed the VA file during 2006, we did so in order to determine if the VA had obtained my Marine Corps Service Record Book (SRB) from military records storage. In particular, we were searching for my Marine Corps record entitled "COMBAT HISTORY EXPEDITIONS AWARDS RECORD" which appears on the following military form: "NAVMC 118(9)-PD (EV. 11-55), and clearly reveals that I directly participated in "OPERATION HARVEST MOON" in Vietnam between Dec 9, 1965 through Dec 18, 1965. Significantly, that military record was NOT in my VA file concerning my first PTSD claim filed on December 3, 1982. Me and my witness have subsequently had occasion

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conversations with VA employees who asserted that my Marine Corps "Combat History" information, would NOT have been something which VA would have ordered from the record center concerning my 1982 PTSD claim. It was CUE for the 1983 Rating Board to have failed to obtain my USMC "Combat History" in response to my 1982 VA PTSD claim. Additionally, it was also CUE for the 2007 Rating Board to have failed to take into consideration that my 1982 PTSD claim was denied because the 1983 Rating Board failed to obtain my USMC "COMBAT HISTORY" concerning my specific claim for PTSD. Simply put: Had the 1983 Rating Board obtained my Marine Corps COMBAT HISTORY as they were required to do, it would have noted my involved on Operation Harvest Moon - - - which bloody operation is recognized by VA as being a major PTSD stressor.

It was also CUE for the 1983 Rating Board to have decided my 1982 PTSD claim, in light of the fact that Dr. Robin Henderson, M.D. emphasized the following in his: "ADDENDUM TO PSYCHIATRIC & POST TRAUMATIC STRESS DISORDER REVIEW" dated March 16, 1983:

> **"A portion of the original dictation on this PTSD examination has been lost"**

Significantly, VA Adjudication Officer H.L. Pfeiffer noted that serious problem, in his decision dated October 17, 1983. I also strongly otherwise strongly objected to Doctor R. Henderson's involvement in my PTSD evaluation, in my handwritten letter to the VA Regional Office dated August 31, 1983. Additionally, my then representative: DISABLED AMERICAN VETERANS, by its letter to the VA Regional Office, dated September 1, 1983, indicated, in part, the following:

> **" . . . the recent (2507) examination received at the VAMC Portland was cursory in nature and was not adequate in which to evaluate his claim. . . He has, therefore, requested that a re-evaluation of his condition and another examination be undertaken."**

The fact that VA Rating Board denied my PTSD claim on the bases of a psychiatric PTSD evaluation concerning which a portion had been lost, was both CUE and violated my right to Due Process of Law. The VA should have caused another psychiatric PTSD evaluation to have been scheduled, with a psychiatrist not hostile towards me and with an open mind. I was very troubled during Dr. Henderson's psychiatric evaluation, by the fact that he appeared to have no interest in my combat experiences in Vietnam, but only appeared to be interested in my childhood. It is also significant to note that Dr. Henderson's DIAGNOSIS of "ATYPICAL PERSONALITY DISORDER" and "INTERMITTENT EXPLOSIVE DISORDER" was not found by the 2 psychiatrist who psychiatrically evaluated me during 2007 concerning my recently granted PTSD claim.

3. **DISAGREEMENT WITH RATING BOARD FAILURE TO COMPLY WITH THE MANDATE OF 38 C.F.R. 4.16(b) AND ADJUDICATE REASONABLY RAISED CLAIM FOR TOTAL DISABILITY ON ACCOUNT OF INDIVIDUAL UNEMPLOYABILITY:**

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The VA Rating Board's 2007 decision failure to comply with the mandate of 38 CFR 4.16(b) which was reasonably raised by my decades (1967 to date) of documented continuous severe employment problems which are clearly evidenced in the record. In that regard, once the Rating Board assigned a 50% PTSD rating in its recent September 2007 Rating decision, it was thereby required in light of my decades of severe employment problems, to then give me "extraschedular consideration" concerning my claim for TOTAL DISABILITY ON ACCOUNT OF INDIVIDUAL UNEMPLOYABILITY which was more than reasonably raised by my employment history included in the Record before it. I hereby urge the DRO review officer, to immediately give me the extraschedular consideration for TDIU which is required by 38 C.F.R 4.16(b) in light of my severe inability because of my PTSD during the past 30 years since I left Vietnam and the Marine Corps, to have followed a substantially gainful occupation. The September 18, 2007 Rating Board made an ERROR by failing to give me the extraschedular consider for a TDIU rating, which my 3 decades of documented severe employment problems caused. Significantly, the copy of my Social Security EARNINGS during the past 40+ years -- between 1962 through 2002 -- verify my severe PTSD caused employment problems.

Because the record before the VA Regional Office, clearly reveals that during the past 40 years since I was separated from the Marine Corps, that I have been unable to secure and follow a substantially gainful occupation by reason of my service-connected PTSD disability which was erroneously rated at 50% in the September 18, 2007, Rating Decision, resulting in a failure to meet the 70% standard set forth in 38 CFR 4.16(a), the Rating Board decision dated September 18, 2007, mandated that I be given extraschedular consideration for a Total Disability on Account of Individual Unemployability (TDIU) rating -- see: 38 C.F.R. 4.16(b). My eligibility for TDIU was reasonably raised by the evidence in my VA claims file or in the VAs possession that should have been inferred by the regional office, but the vital question of TDIU was ignored by the September 18, 2007, VARO Rating Board Decision.

Please advise when the DRO review officer will conduct his or her review which I have hereby requested, in order that I can provide any additional information which I believe may be of additional help to that person, prior to a final DRO decision being made. Please also cause the DRO review officer to notify me concerning our having an informal telephone conference or face to face, in order to enable me to clarify any issues and facilitate the final decision re the DRO review request.

I HEREBY CERTIFY THAT the statements on this form are true and correct to the best of my knowledge and belief.

Thank you.

Sincerely,

James L. Kisor

James L. Kisor
VA C# 23 71 [illegible]

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DEPARTMENT OF VETERANS AFFAIRS
Portland VA Regional Office
1220 SW Third Street
Portland, Oregon 97204

JAMES L. KISOR

VA File Number

Decision Review Officer Decision
March 25, 2009

INTRODUCTION

The records reflect that you are a veteran of the Vietnam Era and Peacetime. You served in the Marine Corps from November 6, 1962 to November 4, 1966. We received a Notice of Disagreement from you on November 30, 2007 about one or more of our earlier decisions. Based on a review of the evidence listed below, we have made the following decision(s) regarding your appeal. The issue remaining on appeal (regarding effective date for grant of service connection for post-traumatic stress disorder) will be addressed at a later date following a thirty(30) day period in which to provide you with an opportunity to submit additional evidence as was discussed during the informal conference of March 24, 2009. The thirty day period will end April 24, 2009.

DECISION

1 . Evaluation of posttraumatic stress disorder, which is currently 50 percent disabling, is increased to 70 percent effective June 5, 2006.

2 . Entitlement to individual unemployability is granted effective June 5, 2006.

\ppx41

EVIDENCE

- Statements(2) from veteran with copy of Service personnel record, DD Form 214, duplicate copy of Portland Vet Center statement of 2/14/83, all received 6/05/06
- Statement from veteran with attachments including copy of service personnel record, copy of citation for heroic participation in Operation Harvest Moon, in-service stressor information, all received 7/18/06
- VA letter to veteran dated 9/15/06 (VCAA)
- Copies of records from Navy Personnel Command indicating veteran was awarded a Combat Action Ribbon
- Statement from veteran with attachments including VCAA Notice Response and copy of USMC After Action Report for Operation Harvest Moon, all received 11/27/06
- Copy of article from Associated Press dated 1/07/07, copy of statement from David E. Collier MS of Portland Vet Center dated 2/14/83, received 2/06/07
- VA Memorandum dated 6/22/07 and Virtual VA documentation: Summary of Operation Harvest Moon
- Records from Portland Vet Center dated 12/28/81 to 8/27/85
- Statement from veteran dated 8/12/07 received 8/15/07
- Statement from veteran dated 8/24/07 with attached assessment by Donald L. Davies, M.D., dated 7/20/07 and additional attachments including copy of USMC After Action Report for Operation Harvest Moon, documentation showing receipt of Combat Action Ribbon, copy of correspondence to Dr. D. Scherf, all received 8/24/07
- Statements from veteran including that dated 2/02/07 and statements outlining stressful experiences in service, and articles submitted regarding post-traumatic stress disorder, all received
- Statement from Sharon Kisor, veteran's spouse, dated 1/14/07 and copy of USMC Certificate of Acceptance
- Various duplicate copies submitted 9/07/07
- VA examination report dated 9/05/07 from Portland VA Medical Center
- Rating Decision of 9/18/07 and all evidence identified therein with notification letter dated 10/11/07
- Statement from veteran dated 10/17/07 and VA Form 21-686c received 10/17/07
- Statement from veteran dated 11/26/07 and statement received 11/26/07
- VA letter to veteran dated 11/26/07
- Notice of Disagreement dated 11/30/07 with attached copy of Social Security Administration earnings summary, all received 11/30/07
- VA letter to veteran dated 12/13/07
- Statement from veteran dated 12/07/07 received 12/12/07
- VA letter to veteran dated 1/24/08
- Statement from veteran dated 2/02/08 received 2/06/08
- Statement from veteran dated 8/20/08 with attachment, received 8/22/08
- VA letter to veteran dated 2/19/09

- Statement from veteran dated 3/17/09 received 3/17/09
- Report of Contact dated 3/19/09
- VA Form 21-22a, VA Form 21-4138, VA Form 21-0589 all signed and dated 3/24/09 and prepared prior to informal conference of 3/24/09
- Statement from veteran dated 3/24/09 received 3/24/09
- Statement from veteran dated 3/24/09 with attached summary of employment history, received 3/24/09
- Informal Conference Report for informal conference conducted in lieu of formal hearing at veteran's request on 3/24/09
- Claims folder

REASONS FOR DECISION

1. Evaluation of posttraumatic stress disorder.

After consideration and review of the evidence of record (including VA examination findings of September 5, 2007, private assessment by Donald Davies dated July 20, 2007, Portland Vet Center records, statements provided by veteran and his spouse, and Informal Conference Report of March 24, 2009) the veteran's post-traumatic stress disorder is determined 70 percent disabling. The evidence of record reflects symptoms of recurrent explosive anger outbursts, daily intrusive thoughts, insomnia, chronic irritability, avoidance of triggers which remind him of Vietnam, suicidal ideation, anhedonia, social withdrawal and avoidance of people, and difficulty getting along with others and authority figures with history of recurrent verbal and physical altercations. The recent examination findings of September 5, 2007 assessed post-traumatic stress disorder in relation to the veteran's symptoms and did not identify any other coexisting mental problems. The assessment by Donald Davies also assessed post-traumatic stress disorder and did not identify any other coexisting mental problems. The Global Assessment of Functioning (GAF) score assigned by Donald Davies was 40, indicative of serious impairment in social and occupational functioning. Significant probative weight is given to the assessment by Donald Davies as this assessment was prepared after a comprehensive three hour interview and provides a detailed description as to veteran's occupational and social impairment over time and also provides detailed description as to impairment of veteran's disability on his marital and employment relationships.

Based on the evidence of record, a 70 percent disability evaluation is assigned. An evaluation of 70 percent is assigned whenever there is occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances

(including work or a worklike setting); inability to establish and maintain effective relationships.

A higher evaluation of 100 percent is not warranted unless there is total occupational and social impairment due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name. This greater level of impairment is not effectively shown.

Given that there has been continual prosecution of this claim, the 70 percent disability evaluation is granted effective June 5, 2006 (date of receipt of reopened claim, pursuant to the historical practice of the Portland VA Regional Office to award compensation from date of receipt of reopened claim.) Given that there is indication that improvement may occur over time with ongoing treatment, this evaluation is not considered permanent at this time and is subject to a future review examination.

Note: As the veteran indicated that he would be satisfied with a 70 percent disability evaluation, this action is considered a complete grant of the benefit sought on appeal.

2. Entitlement to individual unemployability (inferred).

38 CFR 4.16 provides that individual unemployability may be granted where there is one service connected disability evaluated as 60 percent disabling, or two or more service connected disabilities, one of which is 40 percent disabling with a combined evaluation of 70 percent disability or more. The veteran's service connected disability of post-traumatic stress disorder is evaluated as 70 percent disabling and meets the minimum criteria for this benefit to apply. A review of the evidence of record (including private assessment of Donald Davies, Portland Vet Center records, VA examination findings and statements submitted by the veteran and on his behalf as well as the Informal Conference Report) shows that the veteran has symptoms involving recurrent episodes of explosive anger and difficulty getting along with others in positions of authority. The evidence reflects a history of problems of employment due to strained relations with supervisors and cowork[illegible] The evidence also reflects a history of verbal and physical altercations for which the veteran has later indicated an inability to control his actions and anger. The recent examination findings of September 5, 2007 assessed post-traumatic stress disorder in relation to the veteran's symptoms and did not identify any other coexisting mental problems. The assessment by Donald Davies also assessed post-traumatic stress disorder and did not identify any other coexisting mental problem. Based on the evidence of record, and giving significant probative weight to the assessment by Donald Davies, entitlement to individual unemployability is granted as the claimant is shown to be unable

to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

Entitlement to individual unemployability is granted because the claimant is unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities.

Note: As the benefit sought has been granted, this action is determined to fully resolve this issue.

REFERENCES:

Title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits. For additional information regarding applicable laws and regulations, please consult your local library, or visit us at our web site, www.va.gov.

Rating Decision	Department of Veterans Affairs Portland VA Regional Office			Page 1 03/27/2009
NAME OF VETERAN JAMES L. KISOR	VA FILE NUMBER	SOCIAL SECURITY NR	POA	COPY TO

ACTIVE DUTY			
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
11/06/1962	11/04/1966	Marine Corps	Honorable

LEGACY CODES			
ADD'L SVC CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	2		0412

JURISDICTION: Notice of Disagreement Received 11/30/2007

ASSOCIATED CLAIM(s): 174; DRO Decision; 03/24/09

SUBJECT TO COMPENSATION (1. SC)

9411 POSTTRAUMATIC STRESS DISORDER [PTSD/Medical/Veteran Evidence]
Service Connected, Vietnam Era, Incurred-COMBAT
Future Exam April 2012
70% from 06/05/2006

COMBINED EVALUATION FOR COMPENSATION:

70% from 06/05/2006
Individual Unemployability Granted from June 5, 2006

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC Peacetime, Vietnam Era)

9499-9400 INTERMITTENT EXPLOSIVE DISORDER
Not Service Connected, Constitutional/Developmental Abnormality

9499-9400 ATYPICAL PERSONALITY DISORDER
Not Service Connected, Constitutional/Developmental Abnormality

Decision Review Officer-348/218/DKK

DEPARTMENT OF VETERANS AFFAIRS
Portland Regional Office
1220 SW 3RD AVE
PORTLAND OR 97204

January 14, 2010

JAMES L. KISOR

In Reply Refer To:
348/218/srh
C
JAMES L. KISOR

Dear Mr. Kisor:

You have filed a Notice of Disagreement with our action. This is the first step in appealing to the Board of Veterans' Appeals (BVA). This letter and enclosures contain very important information concerning your appeal.

Statement of the Case

We have enclosed a Statement of the Case, a summary of the law and evidence concerning your claim. This summary will help you to make the best argument to the BVA on why you think our decision should be changed.

What You Need To Do

To complete your appeal, you must file a formal appeal. We have enclosed VA Form 9, Appeal to the Board of Veterans' Appeals, which you may use to complete your appeal. We will gladly explain the form if you have questions. Your appeal should address:

- the benefit you want
- the facts in the Statement of the Case with which you disagree; and
- the errors that you believe we made in applying the law.

When You Need To Do It

You must file your appeal with this office within 60 days from the date of this letter or within the remainder, if any, of the one-year period from the date of the letter notifying you of the action that you have appealed. **If we do not hear from you within this period, we will close your case.** If you need more time to file your appeal, you should request more time before the time limit for filing your appeal expires. See item 5 of the instructions in VA Form 9, Appeal to Board of Veterans' Appeals.

T174
SRH

Appx51

Hearings

You may have a hearing before we send your case to the BVA. If you tell us that you want a hearing, we will arrange a time and a place for the hearing. VA will provide the hearing room, the hearing official, and a transcript of the hearing for the record. VA cannot pay any other expenses of the hearing. You may also have a hearing before the BVA, as noted on the enclosed VA Form 9, Appeal to the Board of Veterans' Appeals. **Do not delay filing your appeal if you request a hearing. Your request for a hearing does not extend the time to file your appeal.**

Representation

If you do not have a representative, it is not too late to choose one. An accredited representative of a recognized service organization may represent you in your claim for VA benefits without charge. An accredited attorney or an accredited agent may also represent you before VA, and may charge you a fee for services performed after the filing of a notice of disagreement. In certain cases, VA will pay your accredited agent or attorney directly from your past due benefits. For more information on the accreditation process and fee agreements (including filing requirements), you and/or your representative should review 38 U.S.C. § 5904 and 38 C.F.R. § 14.636 and VA's website at http://www.va.gov/ogc/accreditation.asp. You can also find the names of accredited attorneys, agents and service organization representatives on this website.

What We Will Do

After we receive your appeal, we will send your case to the BVA in Washington, DC for a decision. The BVA will base its decision on an independent review of the entire record, including the transcript of the hearing, if you have a hearing.

Sincerely yours,

K. Kalama

K. Kalama
Service Center Manager

Enclosure(s): VA Form 9
Formal Hearing Transcript dated October 14, 2009

Statement of the Case	*Department of Veterans Affairs* *Portland Regional Office*		Page 1 01/14/2010
NAME OF VETERAN JAMES L. KISOR	VA FILE NUMBER C	SOCIAL SECURITY NO. [illegible]	POA

ISSUE:

Entitlement to an effective date of December 3, 1982 for the grant of service connection for post traumatic stress disorder.

EVIDENCE:

- Rating Decision of September 18, 2007 and all evidence identified therein
- Decision review Officer Decision dated March 25, 2009 and all the evidence contained therein
- Informal Conference Report for informal conference conducted in lieu of formal hearing at veteran's request on March 24, 2009
- Rating Decision dated May 9, 1983 and all the evidence used in the decision.
- Notice of Disagreement received from the veteran on June 6, 1983
- Statement of the Case issued June 14, 1983
- Letter from the veteran requesting a 90 day extension to submit the VA Form 9 received August 9, 1983
- VA letter dated August 19, 1983 granting a 60 day extension for submittal of the VA Form 9
- Letter from the veteran indicating he believed the VA examination conducted March 2, 1983 and signed March 23, 1983 was inadequate for rating purposes received September 6, 1983
- VA Rating Decision dated October 11, 1983 indicating after review of the VA examination results no new examination is warranted
- VA Letter to the veteran dated October 17, 1983
- Letter from the veteran received December 12, 2007
- Letter from the veteran received February 6, 2008
- Letter from the veteran received August 22, 2008 with a U.S. Court of Appeals Decision
- Letter from the veteran received March 17, 2009
- Correspondence from Philip Cushman received March 24, 2009
- Employment information from the veteran received March 24, 2009
- Correspondence received from the veteran with Court documents received April 27, 2009
- Correspondence received from the veteran with packet of information received October 14, 2009
- Letter from the veteran received October 15, 2009
- Letter from the veteran dated October 19, 2009
- Formal Hearing Transcript conducted on October 14, 2009

ADJUDICATIVE ACTIONS:

06-05-2006	Claim received.
09-18-2007	Claim considered based on all the evidence of record.
10-11-2007	Claimant notified of decision.

11-30-2007 Notice of Disagreement received.

11-30-2007 De Novo Review election received from appellant.

01-14-2010 De Novo Review performed based on all the evidence of record.

PERTINENT LAWS; REGULATIONS; RATING SCHEDULE PROVISIONS:

Unless otherwise indicated, the symbol "§" denotes a section from title 38 of the Code of Federal Regulations, Pensions, Bonuses and Veterans' Relief. Title 38 contains the regulations of the Department of Veterans Affairs which govern entitlement to all veteran benefits.

§3.102 (New) Reasonable doubt.

It is the defined and consistently applied policy of the Department of Veterans Affairs to administer the law under a broad interpretation, consistent, however, with the facts shown in every case. When, after careful consideration of all procurable and assembled data, a reasonable doubt arises regarding service origin, the degree of disability, or any other point, such doubt will be resolved in favor of the claimant. By reasonable doubt is meant one which exists because of an approximate balance of positive and negative evidence which does not satisfactorily prove or disprove the claim. It is a substantial doubt and one within the range of probability as distinguished from pure speculation or remote possibility. It is not a means of reconciling actual conflict or a contradiction in the evidence. Mere suspicion or doubt as to the truth of any statements submitted, as distinguished from impeachment or contradiction by evidence or known facts, is not justifiable basis for denying the application of the reasonable doubt doctrine if the entire complete record otherwise warrants invoking this doctrine. The reasonable doubt doctrine is also applicable even in the absence of official records, particularly if the basic incident allegedly arose under combat, or similarly strenuous conditions, and is consistent with the probable results of such known hardships. (Authority: 38 U.S.C. 501(a))

§3.159 (05/08) Department of Veterans Affairs assistance in developing claims.

(a) Definitions. For purposes of this section, the following definitions apply:

(1) Competent medical evidence means evidence provided by a person who is qualified through education, training, or experience to offer medical diagnoses, statements, or opinions. Competent medical evidence may also mean statements conveying sound medical principles found in medical treatises. It would also include statements contained in authoritative writings such as medical and scientific articles and research reports or analyses.

(2) Competent lay evidence means any evidence not requiring that the proponent have specialized education, training, or experience. Lay evidence is competent if it is provided by a person who

has knowledge of facts or circumstances and conveys matters that can be observed and described by a lay person.

(3) Substantially complete application means an application containing the claimant's name; his or her relationship to the veteran, if applicable; sufficient service information for VA to verify the claimed service, if applicable; the benefit claimed and any medical condition(s) on which it is based; the claimant's signature; and in claims for nonservice connected disability or death pension and parents' dependency and indemnity compensation, a statement of income.

(4) For purposes of paragraph (c)(4)(i) of this section, event means one or more incidents associated with places, types, and circumstances of service giving rise to disability.

(5) Information means non-evidentiary facts, such as the claimant's Social Security number or address; the name and military unit of a person who served with the veteran; or the name and address of a medical care provider who may have evidence pertinent to the claim.

(b) VA's duty to notify claimants of necessary information or evidence. (1) When VA receives a complete or substantially complete application for benefits, it will notify the claimant of any information and medical or lay evidence that is necessary to substantiate the claim (hereafter in this paragraph referred to as the "notice"). In the notice VA will inform the claimant which information and evidence, if any, that the claimant is to provide to VA and which information and evidence, if any, that VA will attempt to obtain on behalf of the claimant. The information and evidence that the claimant is informed that the claimant is to provide must be provided within one year of the date of the notice. If the claimant has not responded to the notice within 30 days, VA may decide the claim prior to the expiration of the one-year period based on all the information and evidence contained in the file, including information and evidence it has obtained on behalf of the claimant and any VA medical examinations or medical opinions. If VA does so, however, and the claimant subsequently provides the information and evidence within one year of the date of the notice, VA must readjudicate the claim.

(Authority: 38 U.S.C. 5103)

(2) If VA receives an incomplete application for benefits, it will notify the claimant of the information necessary to complete the application and will defer assistance until the claimant submits this information.

(Authority: 38 U.S.C. 5102(b), 5103A(3))

(3) No duty to provide the notice described in paragraph (b)(1) of this section arises:

(i) Upon receipt of a Notice of Disagreement; or

(ii) When, as a matter of law, entitlement to the benefit claimed cannot be established.

(Authority: 38 U.S.C. 5103(a), 5103A(a)(2))

(c) VA's duty to assist claimants in obtaining evidence. Upon receipt of a substantially complete application for benefits, VA will make reasonable efforts to help a claimant obtain evidence necessary to substantiate the claim. In addition, VA will give the assistance described in paragraphs (c)(1), (c)(2), and (c)(3) to an individual attempting to reopen a finally decided claim. VA will not pay any fees charged by a custodian to provide records requested.

(1) Obtaining records not in the custody of a Federal department or agency. VA will make reasonable efforts to obtain relevant records not in the custody of a Federal department or agency, to include records from State or local governments, private medical care providers, current or former employers, and other non-Federal governmental sources. Such reasonable efforts will generally consist of an initial request for the records and, if the records are not received, at least one follow-up request. A follow-up request is not required if a response to the initial request indicates that the records sought do not exist or that a follow-up request for the records would be futile. If VA receives information showing that subsequent requests to this or another custodian could result in obtaining the records sought, then reasonable efforts will include an initial request and, if the records are not received, at least one follow-up request to the new source or an additional request to the original source.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from non-Federal agency or department custodians. The claimant must provide enough information to identify and locate the existing records, including the person, company, agency, or other custodian holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the person, company, agency, or other custodian holding the records.

(Authority: 38 U.S.C. 5103A(b))

(2) Obtaining records in the custody of a Federal department or agency. VA will make as many requests as are necessary to obtain relevant records from a Federal department or agency. These records include but are not limited to military records, including service medical records; medical and other records from VA medical facilities; records from non-VA facilities providing examination or treatment at VA expense; and records from other Federal agencies, such as the Social Security Administration. VA will end its efforts to obtain records from a Federal department or agency only if VA concludes that the records sought do not exist or that further efforts to obtain those records would be futile. Cases in which VA may conclude that no further efforts are required include those in which the Federal department or agency advises VA that the requested records do not exist or the custodian does not have them.

(i) The claimant must cooperate fully with VA's reasonable efforts to obtain relevant records from Federal agency or department custodians. If requested by VA, the claimant must provide enough

information to identify and locate the existing records, including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided. In the case of records requested to corroborate a claimed stressful event in service, the claimant must provide information sufficient for the records custodian to conduct a search of the corroborative records.

(ii) If necessary, the claimant must authorize the release of existing records in a form acceptable to the custodian or agency holding the records.

(Authority: 38 U.S.C. 5103A(b))

(3) Obtaining records in compensation claims. In a claim for disability compensation, VA will make efforts to obtain the claimant's service medical records, if relevant to the claim; other relevant records pertaining to the claimant's active military, naval or air service that are held or maintained by a governmental entity; VA medical records or records of examination or treatment at non-VA facilities authorized by VA; and any other relevant records held by any Federal department or agency. The claimant must provide enough information to identify and locate the existing records including the custodian or agency holding the records; the approximate time frame covered by the records; and, in the case of medical treatment records, the condition for which treatment was provided.

(Authority: 38 U.S.C. 5103A(c))

(4) Providing medical examinations or obtaining medical opinions. (i) In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim. A medical examination or medical opinion is necessary if the information and evidence of record does not contain sufficient competent medical evidence to decide the claim, but:

(A) Contains competent lay or medical evidence of a current diagnosed disability or persistent or recurrent symptoms of disability;

(B) Establishes that the veteran suffered an event, injury or disease in service, or has a disease or symptoms of a disease listed in §3.309, §3.313, §3.316, and §3.317 manifesting during an applicable presumptive period provided the claimant has the required service or triggering event to qualify for that presumption; and

(C) Indicates that the claimed disability or symptoms may be associated with the established event, injury, or disease in service or with another service-connected disability.

(ii) Paragraph (4)(i)(C) could be satisfied by competent evidence showing post-service treatment for a condition, or other possible association with military service.

(iii) Paragraph (c)(4) applies to a claim to reopen a finally adjudicated claim only if new and material evidence is presented or secured.

(Authority: 38 U.S.C. 5103A(d))

(d) Circumstances where VA will refrain from or discontinue providing assistance. VA will refrain from providing assistance in obtaining evidence for a claim if the substantially complete application for benefits indicates that there is no reasonable possibility that any assistance VA would provide to the claimant would substantiate the claim. VA will discontinue providing assistance in obtaining evidence for a claim if the evidence obtained indicates that there is no reasonable possibility that further assistance would substantiate the claim. Circumstances in which VA will refrain from or discontinue providing assistance in obtaining evidence include, but are not limited to:

(1) The claimant's ineligibility for the benefit sought because of lack of qualifying service, lack of veteran status, or other lack of legal eligibility;

(2) Claims that are inherently incredible or clearly lack merit; and

(3) An application requesting a benefit to which the claimant is not entitled as a matter of law.

(Authority: 38 U.S.C. 5103A(a)(2))

(e) Duty to notify claimant of inability to obtain records. (1) If VA makes reasonable efforts to obtain relevant non-Federal records but is unable to obtain them, or after continued efforts to obtain Federal records concludes that it is reasonably certain they do not exist or further efforts to obtain them would be futile, VA will provide the claimant with oral or written notice of that fact. VA will make a record of any oral notice conveyed to the claimant. For non-Federal records requests, VA may provide the notice at the same time it makes its final attempt to obtain the relevant records. In either case, the notice must contain the following information:

(i) The identity of the records VA was unable to obtain;

(ii) An explanation of the efforts VA made to obtain the records;

(iii) A description of any further action VA will take regarding the claim, including, but not limited to, notice that VA will decide the claim based on the evidence of record unless the claimant submits the records VA was unable to obtain; and

(iv) A notice that the claimant is ultimately responsible for providing the evidence.

(2) If VA becomes aware of the existence of relevant records before deciding the claim, VA will notify the claimant of the records and request that the claimant provide a release for the records. If

the claimant does not provide any necessary release of the relevant records that VA is unable to obtain, VA will request that the claimant obtain the records and provide them to VA.

(Authority: 38 U.S.C. 5103A(b)(2))

(f) For the purpose of the notice requirements in paragraphs (b) and (e) of this section, notice to the claimant means notice to the claimant or his or her fiduciary, if any, as well as to his or her representative, if any.

(Authority: 38 U.S.C. 5102(b), 5103(a))

(g) The authority recognized in subsection (g) of 38 U.S.C. 5103A is reserved to the sole discretion of the Secretary and will be implemented, when deemed appropriate by the Secretary, through the promulgation of regulations.

(Authority: 38 U.S.C. 5103A(g))

§3.2600 Review of benefit claims decisions.

(a) A claimant who has filed a timely Notice of Disagreement with a decision of an agency of original jurisdiction on a benefit claim has a right to a review of that decision under this section. The review will be conducted by an Adjudication Officer, Veterans Service Center Manager, or Decision Review Officer, at VA's discretion. An individual who did not participate in the decision being reviewed will conduct this review. Only a decision that has not yet become final (by appellate decision or failure to timely appeal) may be reviewed. Review under this section will encompass only decisions with which the claimant has expressed disagreement in the Notice of Disagreement. The reviewer will consider all evidence of record and applicable law, and will give no deference to the decision being reviewed.

(b) Unless the claimant has requested review under this section with his or her Notice of Disagreement, VA will, upon receipt of the Notice of Disagreement, notify the claimant in writing of his or her right to a review under this section. To obtain such a review, the claimant must request it not later than 60 days after the date VA mails the notice. This 60-day time limit may not be extended. If the claimant fails to request review under this section not later than 60 days after the date VA mails the notice, VA will proceed with the traditional appellate process by issuing a Statement of the Case. A claimant may not have more than one review under this section of the same decision

(c) The reviewer may conduct whatever development he or she considers necessary to resolve any disagreements in the Notice of Disagreement, consistent with applicable law. This may include an attempt to obtain additional evidence or the holding of an informal conference with the claimant. Upon the request of the claimant, the reviewer will conduct a hearing under §3.103(c).

(d) The reviewer may grant a benefit sought in the claim notwithstanding §3.105(b), but, except as provided in paragraph (e) of this section, may not revise the decision in a manner that is less advantageous to the claimant than the decision under review. A review decision made under this section will include a summary of the evidence, a citation to pertinent laws, a discussion of how those laws affect the decision, and a summary of the reasons for the decision.

(e) Notwithstanding any other provisions of this section, the reviewer may reverse or revise (even if disadvantageous to the claimant) prior decisions of an agency of original jurisdiction (including the decision being reviewed or any prior decision that has become final due to failure to timely appeal) on the grounds of clear and unmistakable error (see §3.105(a)).

(f) Review under this section does not limit the appeal rights of a claimant. Unless a claimant withdraws his or her Notice of Disagreement as a result of this review process, VA will proceed with the traditional appellate process by issuing a Statement of the Case.

(g) This section applies to all claims in which a Notice of Disagreement is filed on or after June 1, 2001. (Authority: 38 U.S.C. 5109A and 7105(d))

§3.114 (New) Change of law or Department of Veterans Affairs issue.

(a) Effective date of award. Where pension, compensation, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law, or a liberalizing VA issue approved by the Secretary or by the Secretary's direction, the effective date of such award or increase shall be fixed in accordance with the facts found, but shall not be earlier than the effective date of the act or administrative issue. Where pension, compensation, dependency and indemnity compensation, or the monetary allowance under 38 U.S.C. 1805 for a child suffering from spina bifida who is a child of a Vietnam veteran is awarded or increased pursuant to a liberalizing law or VA issue which became effective on or after the date of its enactment or issuance, in order for a claimant to be eligible for a retroactive payment under the provisions of this paragraph the evidence must show that the claimant met all eligibility criteria for the liberalized benefit on the effective date of the liberalizing law or VA issue and that such eligibility existed continuously from that date to the date of claim or administrative determination of entitlement. The provisions of this paragraph are applicable to original and reopened claims as well as claims for increase.

(1) If a claim is reviewed on the initiative of VA within 1 year from the effective date of the law or VA issue, or at the request of a claimant received within 1 year from that date, benefits may be authorized from the effective date of the law or VA issue.

(2) If a claim is reviewed on the initiative of VA more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of administrative determination of entitlement.

(3) If a claim is reviewed at the request of the claimant more than 1 year after the effective date of the law or VA issue, benefits may be authorized for a period of 1 year prior to the date of receipt of such request. (Authority: 38 U.S.C. 1806, 5110(g))

(b) Discontinuance of benefits. Where the reduction or discontinuance of an award is in order because of a change in law or a Department of Veterans Affairs issue, or because of a change in interpretation of a law or Department of Veterans Affairs issue, the payee will be notified at his or her latest address of record of the contemplated action and furnished detailed reasons therefor, and will be given 60 days for the presentation of additional evidence. If additional evidence is not received within that period, the award will be reduced or discontinued effective the last day of the month in which the 60-day period expired. (Authority: 38 U.S.C. 5112(b)(6))

§3.151 Claims for disability benefits.

(a) General. A specific claim in the form prescribed by the Secretary must be filed in order for benefits to be paid to any individual under the laws administered by VA. (38 U.S.C. 5101(a)). A claim by a veteran for compensation may be considered to be a claim for pension; and a claim by a veteran for pension may be considered to be a claim for compensation. The greater benefit will be awarded, unless the claimant specifically elects the lesser benefit.

(b) Retroactive disability pension claims. Where disability pension entitlement is established based on a claim received by VA on or after October 1, 1984, the pension award may not be effective prior to the date of receipt of the pension claim unless the veteran specifically claims entitlement to retroactive benefits. The claim for retroactivity may be filed separately or included in the claim for disability pension, but it must be received by VA within one year from the date on which the veteran became permanently and totally disabled. Additional requirements for entitlement to a retroactive pension award are contained in §3.400(b) of this part. (Authority: 38 U.S.C. 5110(b)(3))

§3.155 Informal claims.

(a) Any communication or action, indicating an intent to apply for one or more benefits under the laws administered by the Department of Veterans Affairs, from a claimant, his or her duly authorized representative, a Member of Congress, or some person acting as next friend of a claimant who is not sui juris may be considered an informal claim. Such informal claim must identify the benefit sought. Upon receipt of an informal claim, if a formal claim has not been filed, an application form will be forwarded to the claimant for execution. If received within 1 year from the date it was sent to the claimant, it will be considered filed as of the date of receipt of the informal claim.

(b) A communication received from a service organization, an attorney, or agent may not be accepted as an informal claim if a power of attorney was not executed at the time the communication was written.

(c) When a claim has been filed which meets the requirements of §3.151 or §3.152, an informal request for increase or reopening will be accepted as a claim.

§3.157 Report of examination or hospitalization as claim for increase or to reopen.

(a) General. Effective date of pension or compensation benefits, if otherwise in order, will be the date of receipt of a claim or the date when entitlement arose, whichever is the later. A report of examination or hospitalization which meets the requirements of this section will be accepted as an informal claim for benefits under an existing law or for benefits under a liberalizing law or Department of Veterans Affairs issue, if the report relates to a disability which may establish entitlement. Acceptance of a report of examination or treatment as a claim for increase or to reopen is subject to the requirements of §3.114 with respect to action on Department of Veterans Affairs initiative or at the request of the claimant and the payment of retroactive benefits from the date of the report or for a period of 1 year prior to the date of receipt of the report. (Authority: 38 U.S.C. 5110(a))

(b) Claim. Once a formal claim for pension or compensation has been allowed or a formal claim for compensation disallowed for the reason that the service-connected disability is not compensable in degree, receipt of one of the following will be accepted as an informal claim for increased benefits or an informal claim to reopen. In addition, receipt of one of the following will be accepted as an informal claim in the case of a retired member of a uniformed service whose formal claim for pension or compensation has been disallowed because of receipt of retirement pay. The evidence listed will also be accepted as an informal claim for pension previously denied for the reason the disability was not permanently and totally disabling.

(1) Report of examination or hospitalization by Department of Veterans Affairs or uniformed services. The date of outpatient or hospital examination or date of admission to a VA or uniformed services hospital will be accepted as the date of receipt of a claim. The date of a uniformed service examination which is the basis for granting severance pay to a former member of the Armed Forces on the temporary disability retired list will be accepted as the date of receipt of claim. The date of admission to a non-VA hospital where a veteran was maintained at VA expense will be accepted as the date of receipt of a claim, if VA maintenance was previously authorized; but if VA maintenance was authorized subsequent to admission, the date VA received notice of admission will be accepted. The provisions of this paragraph apply only when such reports relate to examination or treatment of a disability for which service-connection has previously been established or when a claim specifying the benefit sought is received within one year from the date of such examination, treatment or hospital admission. (Authority: 38 U.S.C. 501(a))

(2) Evidence from a private physician or layman. The date of receipt of such evidence will be accepted when the evidence furnished by or in behalf of the claimant is within the competence of the physician or lay person and shows the reasonable probability of entitlement to benefits.

(3) State and other institutions. When submitted by or on behalf of the veteran and entitlement is shown, date of receipt by the Department of Veterans Affairs of examination reports, clinical records, and transcripts of records will be accepted as the date of receipt of a claim if received from State, county, municipal, recognized private institutions, or other Government hospitals (except those described in paragraph (b)(1) of this section). These records must be authenticated by an appropriate official of the institution. Benefits will be granted if the records are adequate for rating purposes; otherwise findings will be verified by official examination. Reports received from private institutions not listed by the American Hospital Association must be certified by the Chief Medical Officer of the Department of Veterans Affairs or physician designee.

§3.160 Status of claims.

The following definitions are applicable to claims for pension, compensation, and dependency and indemnity compensation.

(a) Informal claim. See §3.155.

(b) Original claim. An initial formal application on a form prescribed by the Secretary. (See §§3.151, 3.152).

(c) Pending claim. An application, formal or informal, which has not been finally adjudicated.

(d) Finally adjudicated claim. An application, formal or informal, which has been allowed or disallowed by the agency of original jurisdiction, the action having become final by the expiration of 1 year after the date of notice of an award or disallowance, or by denial on appellate review, whichever is the earlier. (See §§20.1103 and 20.1104 of this chapter.)

(e) Reopened claim. Any application for a benefit received after final disallowance of an earlier claim, or any application based on additional evidence or a request for a personal hearing submitted more than 90 days following notification to the appellant of the certification of an appeal and transfer of applicable records to the Board of Veterans Appeals which was not considered by the Board in its decision and was referred to the agency of original jurisdiction for consideration as provided in §20.1304(b)(1) of this chapter. (Authority: 38 U.S.C. 501(a))

(f) Claim for increase. Any application for an increase in rate of a benefit being paid under a current award, or for resumption of payments previously discontinued.

§3.400(b)2 General. Disability Compensation.

Except as otherwise provided, the effective date of an evaluation and award of pension, compensation or dependency and indemnity compensation based on an original claim, a claim reopened after final disallowance, or a claim for increase will be the date of receipt of the claim or the date entitlement arose, whichever is the later. (Authority: 38 U.S.C. 5110(a))

(b) Disability benefits:

(2) Disability compensation:

(i) Direct service connection (§3.4(b)). Day following separation from active service or date entitlement arose if claim is received within 1 year after separation from service; otherwise, date of receipt of claim, or date entitlement arose, whichever is later. Separation from service means separation under conditions other than dishonorable from continuous active service which extended from the date the disability was incurred or aggravated.

(ii) Presumptive service connection (§§3.307, 3.308, 3.309). Date entitlement arose, if claim is received within 1 year after separation from active duty; otherwise date of receipt of claim, or date entitlement arose, whichever is later. Where the requirements for service connection are met during service, the effective date will be the day following separation from service if there was continuous active service following the period of service on which the presumption is based and a claim is received within 1 year after separation from active duty

DECISION:

Entitlement to an earlier effective date of December 3, 1982 for the grant of service connection for post traumatic stress disorder is not established.

REASONS AND BASES:

Service connection for post traumatic stress disorder was granted effective June 5, 2006, the date of receipt of the veteran's reopened claim. The veteran provided a Notice of Disagreement with the effective date and indicated that the effective date should be December 3, 1982, the date of his original claim for service connection for post traumatic stress disorder.

The veteran indicated that the VA made Clear and Unmistakable errors in the decision dated May 9, 1983. The veteran indicated that VA erred in not obtaining his personnel records; not scheduling another examination when portions of his original examination was missing; and that his post traumatic stress disorder prevented him from properly handling his claim in 1983. The veteran has also indicated that the VA has purposely removed evidence from his claims file to sabotage his claim.

The veteran stated that the VA erred in not obtaining his personnel records when he filed his original claim for benefits, and if the VA obtained the records then he believes his stressors would

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have been verified and service connection granted. The reason the veteran's claim was denied by Rating Decision dated May 9, 1983 was not due to inadequate stressor information but due to the absence of a clinical diagnosis of post traumatic stress disorder. The examiner diagnosed the veteran with intermittent explosive disorder and atypical personality disorder. At the time of the decision the veteran did not have a clinical diagnosis of post traumatic stress disorder.

The veteran has subsequently indicated that the VA has tried to sabotage his claim and removed his personnel records from his claims file. The veteran indicated that his service records were obtained in support of his claim however his personnel records were missing from his claims file. The VA requested the veteran's service treatment records on January 11, 1983 and received them on May 2, 1983. The VA never requested the veteran's personnel records until November 29, 2006. The records were requested in support of his reopened post traumatic stress disorder claim.

The veteran stated that the VA erred in not scheduling another examination after it was found that part of the examination dictation was missing. The examiner indicated that although part of the dictation was missing he was able to recall enough information to render an opinion and to recall his diagnostic impression at the time of the dictation. The veteran submitted a letter after receipt of the Rating Decision and requested another examination due to perceived inaccuracies in the examination and due to the fact that the examiner lost part of the examination. His request generated another Rating Decision which indicated that the examination was not inadequate, and the prior denial was upheld.

The veteran indicated that due to his post traumatic stress disorder he was unable to properly handle his claim in 1983. The records note that the veteran filed an appeal with the initial denial of post traumatic stress disorder. Once he received the Statement of the Case, he had the wherewithal to request a 90 extension in order to obtain supporting evidence for his claim. The veteran did submit a rebuttal letter in regards to the VA examination results, however a VA form 9 was never received from the veteran to perfect his appeal. The evidence of record does not indicate that his undiagnosed post traumatic stress disorder prevented him from pursuing his compensation claim.

The evidence of record fails to establish that an earlier effective date of December 3, 1982 is warranted in this case. The effective date of June 5, 2006 is continued.

PREPARED BY

S. Hinds, Decision Review Officer